

## Regular Meeting

The regular meeting of the City Council of the City of Fitchburg was held in the Memorial Middle School Auditorium, 615 Rollstone St., Fitchburg, on January 16, 2018. The meeting was called to order by President Michael Kushmerek at 7:05 P.M. The Clerk called the roll and ten (10) Councillors were present. The meeting opened with a salute to the Flag led by Councillor Clark.

## PUBLIC FORUM

## Public Forum

1. Ms. Jean Labelle-Pierce, 264 Tibbett Circle, thanked the Council for their support and spoke in favor of adoption of Order 3-2018.
2. Ms. Kelly Johnson, 168 Charles St., spoke in opposition to adoption of Order 4-2018. She stated that the needs of the schools should be addressed first, that MSBA is a reimbursement process for school building projects and not guaranteed. She asked the Council to hold off on proceeding with the project because it is not the right move.

## REPORT OF COMMITTEE ON RECORDS

## Records

The Committee on records reported the minutes of the Regular Meeting of December 19, 2017 were correctly recorded. Report accepted and minutes adopted.

## COMMUNICATION-HIS HONOR THE MAYOR

## Re-Appointment Letters

Communication  
His Honor the  
Mayor

1. Ms. Barbarba Nealon, as a member of the Human Rights Commission, for a term to expire January 1, 2021.

Re-Appointment  
Letters

STEPHEN L. DINATALE  
MAYOR  
166 BOULDER DRIVE  
FITCHBURG, MA 01420  
TEL. (978) 829-1801

*The City of Fitchburg*  
*Massachusetts*  
OFFICE OF THE MAYOR

FITCHBURG CITY CLERK  
2017 DEC 28 PM 1:05

AARON TOURIGNY  
CHIEF OF STAFF  
ATOURIGNY@FITCHBURGMA.GOV  
JOAN DAVID  
ADMINISTRATIVE AIDE  
JDAVID@FITCHBURGMA.GOV

December 28, 2017

The Honorable City Council  
Fitchburg Municipal Offices  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

Dear Honorable Councilors,

I hereby reappoint and ask for your confirmation of Ms. Barbara Nealon of 58 Goodrich St. Fitchburg, MA as a member of the Human Rights Commission, with an expiration date of January 1, 2021.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. DiNatale".  
Stephen L. DiNatale  
Mayor

*City of Fitchburg,* January 16, 2018

Communication  
His Honor the  
Mayor

Re-Appointment  
Letters

2. Ms. Diane Ouellette, as a member of the Trustees of Public  
Burial Grounds, for a term to expire January 8, 2020.



**STEPHEN L. DINATALE**  
**MAYOR**

166 BOULDER DRIVE  
FITCHBURG, MA 01420  
TEL. (978) 829-1801

*The City of Fitchburg*

*Massachusetts*  
**OFFICE OF THE MAYOR**

FITCHBURG CITY CLERK

2017 DEC 28 PM 1:05

**AARON TOURIGNY**  
CHIEF OF STAFF  
ATOURIGNY@FITCHBURGMA.GOV

**JOAN DAVID**  
ADMINISTRATIVE AIDE  
JDAVID@FITCHBURGMA.GOV

December 28, 2017

The Honorable City Council  
Fitchburg Municipal Offices  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

Dear Honorable Councilors,

I hereby reappoint and ask for your confirmation of Ms. Diane Ouellette of 10 Brigham St., Fitchburg, MA  
as a member of the Trustees of Public Burial Grounds for a term to expire on January 8, 2020.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in cursive script, reading "Stephen L. DiNatale".  
Stephen L. DiNatale  
Mayor

Appointments read and referred to the Appointments Committee.

**COMMUNICATION**

Anna M. Farrell, City Clerk  
Re: Open Meeting Law Complaint

Communication  
Anna M. Farrell  
City Clerk

re: Open Meeting  
Law Complaint

*1/16/18 Agenda*

**Farrell, Anna**

**From:** Farrell, Anna  
**Sent:** Wednesday, January 03, 2018 1:00 PM  
**To:** Amy Green; Anthony Zarrella; David Clark; Elizabeth Walsh (elizabethwalsh1@verizon.net); Joel Kaddy; Marcus DiNatale; Marisa R. Fleming (m4w5cc@gmail.com); Michael Kushmerek (michael.kushmerek@yahoo.com); Paul Beauchemin; Samantha Squailia, CC (samsquailia.fitchburg@gmail.com)  
**Cc:** Vincent Pusateri; Vincent Pusateri II; Christine Tree; 'bobobrien8@gmail.com'  
**Subject:** OML complaint  
**Attachments:** oml-obrien-01032018134823.pdf; oml-process-01032018134908.pdf

Good afternoon Councillors,

1. Please find attached a copy of an Open Meeting Law complaint received in my office on December 29, 2017.
2. Please find attached a copy of the process for dealing with an OML complaint.

Accordingly, I am disseminating the complaint to you, as the members of the public body which is the subject of the complaint, and the issue will be placed on your January 16, 2018 City Council meeting agenda for review.

Thank you,

Anna M. Farrell  
City Clerk

166 Boulder Drive  
Fitchburg MA 01420  
Phone - 978-829-1820  
Fax - 978-829-1964  
[afarrell@fitchburgma.gov](mailto:afarrell@fitchburgma.gov)  
[www.fitchburgma.gov](http://www.fitchburgma.gov)

City of Fitchburg, January 16, 2018

Communication  
Anna M. Farrell  
City Clerk

re: Open Meeting  
Law Complaint



**OPEN MEETING LAW COMPLAINT FORM**

Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

FITCHBURG CITY CLERK  
2017 DEC 29 PM 4:17

**Your Contact Information:**

First Name: ROBERT Last Name: O'BRIEN

Address: 114 BISHOP RD

City: FITCHBURG State: MA Zip Code: 01420

Phone Number: (254) 247-9041 Ext. \_\_\_\_\_

Email: bobobrien8@gmail.com

Organization or Media Affiliation (if any): \_\_\_\_\_

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

☒ Individual ☐ Organization ☐ Media

**Public Body that is the subject of this complaint:**

☒ City/Town ☐ County ☐ Regional/District ☐ State

Name of Public Body (including city/town, county or region, if applicable): FITCHBURG CITY COUNCIL

Specific person(s), if any, you allege committed the violation: MICHAEL KUSHMERER

Date of alleged violation: 12/24/17



Communication  
Anna M. Farrell  
City Clerk

re: Open Meeting  
Law Complaint

**Description of alleged violation:**

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

THE RULE CHANGE PROPOSED BY MR KUSHMERER VIOLATES MASS MUNICIPAL LAW § 26.7.1 STATING THAT ANY PERSON MAY MAKE A VIDEO OR AUDIO RECORDING OR TRANSMISSION OF THE MEETING. FURTHER, ACCORDING TO THE COMM OF MASS. CONSTITUTION, VARIOUS STATUTES, AND SUPPORTING CASE LAW, NO CITY OR TOWN SHALL ENACT AN ORDINANCE OR BY LAW THAT SUPERSEDES OR CONTRAVENES THE LAWS OF THE COMMONWEALTH. ADDITIONALLY, THE MANNER IN WHICH A MAJOR ISSUE WAS SLIPPED ONTO THE AGENDA FOR A PURELY "ORGANIZATIONAL" MEETING IS, IN AND OF ITSELF A SEPARATE VIOLATION.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

1. COMPLY WITH THE LETTER AND INTENT OF THE OPEN MEETING LAW.
2. ADOPT TRANSPARENCY AS A POLICY, ALLOWING ELECTRONIC TRANSMISSION OF PUBLIC MEETINGS IAW STATE LAW

**Review, sign, and submit your complaint****I. Disclosure of Your Complaint.**

**Public Record.** Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

**Publication to Website.** As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

**II. Consulting With a Private Attorney.**

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

**III. Submit Your Complaint to the Public Body.**

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: 

Date: 29 DEC 17

For Use By Public Body

Date Received by Public Body

For Use By AGO

Date Received by AGO

*City of Fitchburg,*

January 16, 2018



The Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108

## OPEN MEETING LAW COMPLAINT FORM

### Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

#### Instructions for filing a complaint:

- o Fill out the attached two-page form completely and sign it. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
  - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
  - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
  - o Complaints may be filed by mail, email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

#### Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address it. At the same time, the body must send the Attorney General a copy of the response. The public body may delegate this responsibility to its counsel or a staff member, but only after it has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

#### Once the public body has responded to the complaint:

- o If you are not satisfied with that the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, e-mail, or by hand, but only once you have waited for 30 days after filing the complaint with the public body.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by e-mail at [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).

Communication read and placed on file in the City Clerk's Office.

Communication  
Anna M. Farrell  
City Clerk

re: Open Meeting  
Law Complaint

Reports of  
Committees  
Appointments  
Committee

**REPORTS OF COMMITTEES**

**Appointments Committee Oral Report**  
**Meeting of January 16, 2018**

The Appointments Committee recommended the following  
Appointments be confirmed:

**Re-Appointments:**  
**Board of Health**

(Term to expire January 1, 2021)  
Mr. John Bogdasarian

**Fitchburg Disability Commission**

(Term to expire May 1, 2019)  
Ms. Sheela Vadreau

**New Appointments:**

**Board of Commissioners of Trust Funds**

(Term to expire January 1, 2021)  
Ms. Sophia Bogdasarian

**Special Police Officers for the City of Fitchburg**

(Terms to take effect upon retirement)

Sergeant Gary L. Ouellette  
Officer Stephen E. McBride  
Officer Matthew L. Burns  
Officer James Connolly

Report accepted. Appointments confirmed by unanimous vote. 10  
members present. Board consists of 10 members.

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**Council as a Whole Committee Oral Report  
Meeting of January 11, 2018**

Reports of  
Committees

Council as a  
Whole Committee

Councillor Zarrella recused himself and left the room prior to further discussion taking place.

The Council as a Whole Committee recommended the following Petition be given leave to withdraw by vote of 8 in favor and 1 opposed (Squailia). 9 members present. Board consists of 10 members.

- 008-18. Robert O'Brien and Stacey Fenton, and various residents whose signatures are attached, to request that the Council delay the vote on the \$24 Million dollar bond issue until:
- The newly elected City Councillors can be fully briefed by L. & Pagano and citizens who oppose the bond issue.
  - We request three public meetings with a 14 day notice in a large venue with adequate advertising (newspapers, city website, electronic road signs, etc.) with both views given 30-40 minutes to present their case.

ROBERT O'BRIEN bobobrien8@gmail.com  
STACEY FENTON 254 242 9041  
978 235 0023

**TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG**

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

FITCHBURG CITY CLERK  
JAN DEC 27 AM 9:40

We request that the council delay the vote on the \$24 Million dollar bond issue until

- The newly elected City Councilors can be fully briefed by L. & Pagano and citizens who oppose the bond issue.
- We request three public meetings with a 14 day notice in a large venue with adequate advertising (newspapers, city website, electronic road signs etc.) with both views given 30-45 minutes to present their case.

Coral Cora Coral Cora 24 Old Leominster  
Greg Leavitt Greg Leavitt Rcl. Fitchburg  
Robert Pooler Robert Pooler 24 OLD LEOMINSTER RD  
Cindy Wilson Cindy Wilson 167 Blossom St 2A  
W.F. Walsh Fitchburg  
Melissa Chantachack Melissa Chantachack 1167 Blossom St 3-A  
Carrie Whitney Carrie Whitney Fitchburg Mass 01420  
Amanda Ludwig Amanda Ludwig 50 PROSPECT ST  
Tiffany Power Tiffany Power Fitchburg  
Sean West Sean West LEOMINSTER Fitchburg  
Shae Wilson Shae Wilson 374 FT ST  
Christina Bachman Christina Bachman Fitchburg Mass  
30 Mechanic St Fitchburg MA 01420  
54 Blossom St

Reports of  
Committees

Council as a  
Whole Committee

TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

We request that the council delay the vote on the \$24 Million dollar bond issue until

- A) The newly elected City Councilors can be fully briefed by L & Pagano and citizens who oppose the bond issue.
- B) We request three public meetings with a 14 day notice in a large venue with adequate advertising (newspapers, city website, electronic road signs etc.) with both views given 30 - 45 minutes to present their case.

FITCHBURG CITY CLERK  
2018 DEC 27 AM 9:40

ROBERT J O'BRIEN Robert J O'Brien 114 Bishop Rd.  
Al Dan/Lantz 135 Bishop Rd.  
Kevin R. Varno 134 Bishop Rd.  
Jana Carlson 134 Bishop Rd.  
Tara Ouellette 58 Depot St.  
Linda Pelluchio 445 Rollstone St.  
Christopher Tetreault 160 Bishop St.  
Michael Schaff 171 Bishop Rd.  
Gina Devere 100 Castle Rd.

City of Fitchburg, January 16, 2018

Reports of  
Committees

Council as a  
Whole Committee

TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

2017 DEC 27 AM 9:40  
FITCHBURG CITY CLERK

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Aaron Beals (First!) 61 Turnpike Rd Ashby  
Casey Beals - 61 Turnpike Rd Ashby, MA

Paul Brown 56 Fitchburg RD Townsend Ma  
IAN KIMMEL 96 SHEA ST.  
Catherine Richard Catherine Richard 96 Shea St.

Reports of  
Committees

Council as a  
Whole Committee

TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

We request that the council delay the vote on the \$24 Million dollar bond issue until

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- B) We request three public meetings with a 14 day notice in a large venue with adequate advertising (newspapers, city website, electronic road signs etc.) with both views given 30 – 45 minutes to present their case.

James R Prophet *James R Prophet*  
220 High ST APT 2

Mikayla DeHoro *Mikayla DeHoro*  
130 South St Fitchburg Ma

DEC 27 AM 9:40

FITCHBURG CITY CLERK

City of Fitchburg,

January 16, 2018

Reports of  
Committees

Council as a  
Whole Committee

**TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG**

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

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Steph Reckmeyer Steph Rodriguez  
43 Lunenburg St.

Amanda Green Amanda Green  
38 Bernadette St.

Carol Pessera Carol Pessera  
449 Franklin Rd  
Nicole Mattson Nicole M. Mattson  
72 Day St.

Kevin Skinner  
29 TAIRD ST APT 1  
Donald Mattson Donald Mattson  
29 MARIAN PARWAY

FITCHBURG CITY CLERK  
JAN DEC 27 AM 9:40



Reports of  
Committees

Council as a  
Whole Committee

TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

We request that the council delay the vote on the \$24 Million dollar bond issue until

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Hannah Headley  
59 Marshall St.  
Fitchburg MA.

Hannah Headley

Hayat Canela  
322 Elm Street #3  
Fitchburg, MA 01420

Hayat Canela

Kelly Smith  
1006 Westminster Hill Rd  
Fitchburg, MA 01420

Kelly Smith

LYNN PETERS  
Lynn Peters

54 WALLACE AVE #00  
Fitchburg, MASS  
01420

TOM MCDONALD #70  
54 WALLACE AVE  
FITCHBURG, MASS  
01420

Cheryl Daphnis  
70 Pleasant Street  
Fitchburg MA  
Cheryl Daphnis

DEC 27 AM 9:41

FITCHBURG CITY CLERK

City of Fitchburg,

January 16, 2018

Reports of  
Committees

Council as a  
Whole Committee

TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

We request that the council delay the vote on the \$24 Million dollar bond issue until

- A) The newly elected City Councilors can be fully briefed by L & Pagano and citizens who oppose the bond issue.
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FITCHBURG CITY CLERK  
DEC 27 AM 9:41

Denise Mayo - 25 North St #1

Terre Maxwell 1203 Main St

Ally Hat, Alicia Hunt 115 Madison St #3

445 Beech St

Rhonda Stebbins 53 Mechanic St

445 Beech St

55 Lunenburg St

40 Holt St

39 Barry St Fitchburg

4 Laurel Leominster, Amherst

4 Laurel St

Report accepted. Petition given leave to withdraw by vote of 8 in favor and 1 opposed (Squallia). 9 members present. Board consists of 10 members.

Reports of  
Committees

Council as a  
Whole Committee

The Council as a Whole Committee recommended the following Order be adopted by vote of 8 in favor and 1 opposed (Squailia). 9 members present. Board consists of 10 members.

003-18. ORDERED THAT: There be and hereby is appropriated the sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) same to be charged against AVAILABLE FUNDS and credited to CAPITAL PROJECTS, CITY PROJECTS, CITY HALL RENOVATION PROJECT.

Report accepted. Order adopted by vote of 8 in favor and 1 opposed (Squailia). 9 members present. Board consists of 10 members.

Order signed by the Mayor January 17, 2018.

The Council as a Whole Committee recommended the following Order be adopted by vote of 8 in favor and 1 opposed (Squailia). 9 members present. Board consists of 10 members.

004-18. LOAN ORDER: ORDERED THAT: \$22,500,000.00 be appropriated to pay costs of renovating, reconstructing, making extraordinary repairs, and equipping the existing City Hall building (718 Main St.) and the Bank of America building (700 Main St.) as outlined in the enclosed Order.

City of Fitchburg

FITCHBURG CITY CLERK

In City Council, 2017 DEC 27 PM 4: 07

ORDERED:— That

\$22,500,000.00 is appropriated to pay costs of renovating, reconstructing, making extraordinary repairs, and equipping the existing City Hall building (718 Main Street) and the Bank of America building (700 Main Street), construction of a parking garage or deck, site work, and the payment of all other cost incidental and related thereto; that to meet this appropriation, the City Treasurer, with the approval of the Mayor, is authorized to borrow said amount under and pursuant to M.G.L Chapter 44, section 7(1), or pursuant to any other enabling authority, and to issue bonds or notes of the City therefor. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay costs by a like amount.

Report accepted. Order sent to a first reading and ordered advertised by roll call vote of 8 in favor and 1 opposed (Squailia). 10 members present. Board consists of 10 members.

Councillor Zarrella returned to the Council Meeting.

Reports of  
Committees

Finance Committee

**Finance Committee Oral Report**  
**January 16, 2018**

The Finance Committee recommended the following Loan Order be adopted:

- 005-18. LOAN ORDER: \$1,000,000.00 be appropriated for the purpose of paying costs of feasibility study on Crocker Elementary School, 200 Bigelow Drive, Fitchburg, MA, for K-4 or K-8 project as outlined in the Order.

**City of Fitchburg**

FITCHBURG CITY CLERK

2017 DEC 27 PM 4:07

In City Council,

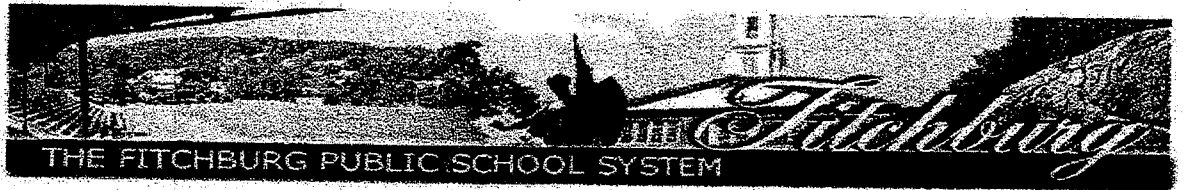
**ORDERED:— That**

the City of Fitchburg appropriate the amount of One Million (\$1,000,000.00)

Dollars for the purpose of paying costs of feasibility study on Crocker Elementary School, 200 Bigelow Drive, Fitchburg MA for K-4 or K-8 project, including the payment of all costs incidental or related thereto, and for which City of Fitchburg may be eligible for a grant from the Massachusetts School Building Authority ("MSBA"), said amount to be expended under the direction of the School Building Committee. To meet this appropriation the Treasurer, with the approval of the Mayor is authorized to borrow said amount under and pursuant to M.G.L. Chapter 44, or pursuant to any other enabling authority. The City of Fitchburg acknowledges that the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the City of Fitchburg incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the City of Fitchburg, and that the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Feasibility Study Agreement that may be executed between the City of Fitchburg and the MSBA. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

Reports of  
Committees

Finance Committee



# Prepared to Succeed

376 South Street  
Fitchburg, MA 01420  
978-345-3220 Tele  
978-348-2305 Fax

ANDRÉ RAVENELLE  
Superintendent

Patti Piekarz  
Administrative Assistant

PAULA GIAQUINTO  
Assistant Superintendent

ROBERT M. JOKELA  
Assistant Superintendent

December 26, 2017

Mayor Stephen DiNatale  
City Hall  
166 Boulder Drive  
Fitchburg, MA 01420

RE: \$1,000,000 Loan Order for Feasibility Study

Mayor-

In our continuing effort to provide the best school learning and working environments for the students and staff respectively, I request the City Council approve up to \$1,000,000 to conduct a feasibility study in connection with a Crocker Elementary School project. Massachusetts School Building Authority ("MSBA") has invited Fitchburg to participate into their Core Grant program whose eligible expenses would be eighty percent (80%) reimbursable. The Feasibility Study is considered an expense that would be eligible for 80% reimbursement from MSBA. Requested funding would be utilized to retain an Owner's Project Manager ("OPM") and designer, who together working with us, would review options of what is possible: renovation, repair, or new construction.

MSBA has invited Crocker Elementary (K-4) into their core grant program, and one component of the feasibility study could involve a review of this site as a K-8. We recently met with MSBA, and are awaiting a response from them certifying enrollment projections for both a K-4 and K-8; MSBA has already completed a K-4 enrollment projection review.

City of Fitchburg,

January 16, 2018

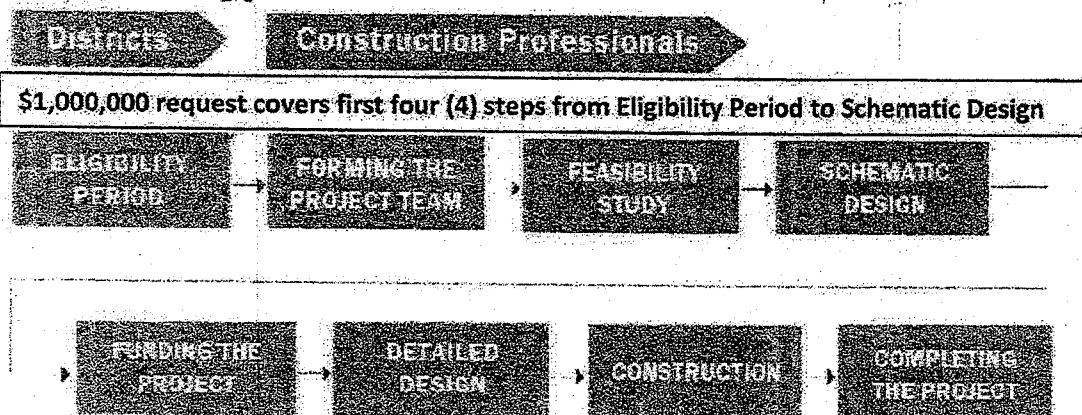
Reports of  
Committees

Finance Committee

MSBA follows an eight (8) step process from Feasibility to Project completion as follows:

## MSBA Building Process

Steps primarily for:



I am attaching handouts from the November 13, 2017 School Committee Building Needs Subcommittee meeting which provides more info from the 2016 MSBA School Survey Report on Fitchburg schools and the summary from the January 2016 Lamoureux Pagano Strategic Facilities Plan for your reference.

In closing, your consideration and requested approval of the request will begin the process to investigate possible options for Crocker Elementary and Fitchburg Public Schools.

Thank you for your support.

Regards,

*Andre Ravenelle*  
Andre Ravenelle  
Superintendent of Schools

Cc: Calvin Brooks, City Auditor  
Fitchburg School Committee

MSBA Building Condition Report

Fitchburg Summary

Compiled from Report by:

13-Nov-17

Robert M. Jokela, Asst. Supt.

Building Needs Subcommittee  
Nov 18, 2017

The building condition rating is an overall score for the general condition of a school facility's major systems, such as roofing, HVAC, windows, and flooring. The building condition rating is on a scale of 1 to 4, with a rating of 1 indicating the best conditions and a 4 indicating the poorest.

Building Condition Rating	FBS School(s)	Description	Potential Future Action	Building Facility Index	Est. Cost	Comments
1	FHS	The building is in good condition with few or no building systems needing attention.	General Maintenance	<24.5%		
2	Reggie, Memorial, & Goodrich	The building is in generally good condition with a few building systems that may need some attention.	Minor Repair or Renovation	>=24.5% and <39.5%		
3	McKay, SSES	The building is in fair to poor condition with some building systems needing repair or replacement	Moderate Repair or Renovation	>= 39.5% and <59.5%		
		The building is in poor condition with many building systems requiring attention, and further study to				City Council planning \$1M Feasibility Study; 80% reimbursement; City Estimates
4	Crocker, Longsjo	determine the extent of renovations or potential replacement.	Major Renovation or Potential Replacement	>=59.5%	Crocker: \$56M; Longsjo \$47M	\$60M total project and assumes \$12M net (assuming all costs eligible); Longsjo est from LP for basic repair

Reports of Committees

Finance Committee

Reports of  
Committees  
  
Finance Committee

MSBA Building Condition Report  
Fitchburg Summary  
Compiled from Report by:  
  
13-Nov-17  
  
Robert M. Jokela, Asst. Supt.

The general environment rating is also based on a 1 to 4 scale and reflects the school building's learning environment, building safety, universal accessibility, academic sufficiency, program sufficiency, and instructional technology. For 2016, more emphasis was placed on gathering technology and security data.

General Environment Rating	FPS School(s)	Description	General Environmental Score	Est. Cost	Comments
1	Longslo, McKay, Memorial, Rgoid	The school's general environment is good and is conducive to teaching and learning.	<24.5%		
2	Cracker, FHS, SSES	The school's general environment is good, but a few conditions may make learning and teaching less than ideal.	>=24.5% and <39.5%		
3	Goodrich	The school's general environment is fair with multiple conditions that may negatively affect learning and teaching.	>= 39.5% and <59.5%		
4	NONE	The school's general environment is poor and many conditions present obstacles to learning and teaching.	>=59.5%		



MSBA Building Condition Report  
Fitchburg Summary  
Compiled from Report by:  
13-Nov-17

Capacity utilization at individual schools was rated based on comparisons to statewide norms. Each school building received an Over Utilization, Average Utilization, or Under Utilization score.			
Capacity Utilization Rating	FPS School(s)	Description	Capacity Utilization
Over	Crocker, FHS, SSES, Goodrich	School facilities may not be adequately sized for the current enrollment and educational program.	>=125%
Avg	McKay, Memorial, Reingold	School facilities appear to be adequately sized for the current enrollment and educational program.	>=80 and <125%
Under	Longsjo	School facilities may exceed the size necessary to house the current enrollment and educational program.	<80%

Strategic Facilities Use Plan Option Summary  
Lamoureux Pagano Study  
Compiled by: Robert Jokela, Asst. Supt. Fin. & Ops.

	A	B	C
School (\$Millions)	Basic Repair	Addition (+ Basic Repair [A])	New Construction
Crocker	\$16-17.9M	\$4.4-4.5M	\$54.8-56.1
SSES-West	7.1-8.3		
SSES-South	5.1-6		
SSES-East	2.9-3.6		
SSES-North		0 \$5.5-6	\$19.8-20.3
Reingold	8.2-10.2		
McKay		0	
Memorial	18.7-21.8	\$8.7-8.9	
Longsjo	41.8-46.7		
FHS	12.5-18.7		
Goodrich	4.2-4.6		
TOTAL OPTION A:	\$116.5-137.9M		
TOTAL OPTION B(ONLY):		\$18.6-19.4M	
COMBINED A+B		\$135-157.3M	
TOTAL OPTION C (NEW)			\$74.6-76.4M
Plus 20% Soft Costs			\$15M
EST. 80% MSBA REIMB			\$72M
NET CITY EST.			\$18M

Reports of  
Committees

Finance Committee

SCHOOL RATING SUMMARY

Facilities information gathered for each school includes gross square footage, age, building conditions, construction and renovation history, numbers and types of classrooms, and availability of core spaces. This information is explored in more depth in the following pages.

Overall, Massachusetts schools and school buildings performed well in the primary scoring rubrics, which rated building condition, the general environment, and capacity utilization.

The building condition rating is an overall score for the general condition of a school facility's major systems, such as roofing, HVAC, windows, and flooring. The building condition rating is on a scale of 1 to 4, with a rating of 1 indicating the best conditions and a 4 indicating the poorest. The 1 to 4 ratings are derived from the building's facility condition index, which is an evaluation of the site and building systems on a 100% scale.

FHS  
Good  
Medium  
Minor  
SSES  
CROCKER  
Longje  
Rug 11-17

RATING	DESCRIPTION	POTENTIAL FUTURE ACTION	BUILDING FACILITY CONDITION INDEX
1	The building is in good condition with few or no building systems needing attention.	General Maintenance	<24.5%
2	The building is in generally good condition with a few building systems that may need some attention.	Minor Repair or Renovation	>=24.5% and <39.5%
3	The building is in fair to poor condition with some building systems needing repair or replacement.	Moderate Repair or Renovation	>= 39.5% and <59.5%
4	The building is in poor condition with many building systems requiring attention, and further study to determine the extent of renovations or potential replacement.	Major Renovation or Potential Replacement	>=59.5%

The general environment rating is also based on a 1 to 4 scale and reflects the school building's learning environment, building safety, universal accessibility, academic sufficiency, program sufficiency, and instructional technology. For 2016, more emphasis was placed on gathering technology and security data.

Good  
Minor  
Medium  
CROCKER  
FHS  
SSES  
Booth

RATING	DESCRIPTION	GENERAL ENVIRONMENT SCORE
1	The school's general environment is good and is conducive to teaching and learning.	<24.5%
2	The school's general environment is good, but a few conditions may make learning and teaching less than ideal.	>=24.5% and <39.5%
3	The school's general environment is fair with multiple conditions that may negatively affect learning and teaching.	>= 39.5% and <59.5%
4	The school's general environment is poor and many conditions present obstacles to learning and teaching.	>=59.5%

Capacity utilization at individual schools was rated based on comparisons to statewide norms. Each school building received an Over Utilization, Average Utilization, or Under Utilization score.

The criteria for each rating will be discussed in more detail in the sections that follow as well as in the following table.

CROCKER  
FHS  
SSES  
Booth  
Longje

RATING	DESCRIPTION	CAPACITY UTILIZATION
Over Utilization	School facilities may not be adequately sized for the current enrollment and educational program.	>=125
Average Utilization	School facilities appear to be adequately sized for the current enrollment and educational program.	>=80 and <125
Under Utilization	School facilities may exceed the size necessary to house the current enrollment and educational program.	<80

Reports of  
Committees

Finance Committee

Massachusetts School Building Authority - 2016 School Survey Report

School	Type	Year Founded	2016/2017 Enrollment	Total Cost	Student	Classroom Count	Student/ Classroom	Building Condition	Capacity Rating	General Environment Rating
Everett	K-8	1910	871	91,294	104.8	39	22.3	1	Average	1
Everett	K-8	1976	696	59,892	117.6	29	20.6	1	Average	1
Everett	ES	1985	694	44,280	78.5	22	25.6	1	Over	6
Fairhaven	ES	2007	438	74,000	169.7	*	*	*	*	*
Fairhaven	HS	1906	616	148,000	240.3	49	18.4	2	Under	1
Fairhaven	MS	1988	458	89,844	196.2	33	19.9	1	Under	1
Fairhaven	ES	2013	614	30,360	68.1	*	*	*	*	*
Fairhaven	O-HS	1978	213	835,000	282.0	*	*	*	*	*
Fair River	ES	2008	725	121,286	167.3	*	*	*	*	*
Fair River	MS	1971	648	120,000	219.3	42	13.0	3	Under	1
Fair River	HS	1978	26	0.0	0.0	*	*	*	*	*
Fair River	ES	2001	763	116,883	152.5	*	*	*	*	*
Fair River	K-8	1992	624	122,390	193.1	38	18.4	2	Average	1
Fair River	ES	1992	289	21,289	72.7	10	18.3	3	Over	8
Fair River	K-8	1924	546	78,881	140.7	27	20.2	1	Average	1
Fair River	ES	2008	697	106,818	178.9	*	*	*	*	*
Fair River	ES	2009	719	95,782	134.3	*	*	*	*	*
Fair River	MS	2009	770	177,833	230.7	*	*	*	*	*
Fair River	MS	2013	622	88,561	142.4	*	*	*	*	*
Fair River	MS	1930	27	83,609	181.7	3	9.0	3	Under	2
Fair River	HS	1920	162	71,614	44.9	17	9.6	3	Under	2
Fair River	ES	1904	304	45,332	139.1	16	20.3	3	Over	3
Fair River	ES	2003	623	91,408	174.8	30	17.4	1	Average	1
Fair River	K-8	1986	32	17,773	555.4	9	3.6	2	Under	2
Fair River	ES	2002	768	138,625	180.5	*	*	*	*	*
Fair River	ES	1988	361	63,600	162.4	26	14.0	3	Average	1
Fair River	O-HS	1979	882	300,300	346.7	19	11.2	1	Under	1
Fair River	MS	1963	698	146,000	208.3	42	12.6	2	Average	1
Fair River	Int	1968	589	103,000	174.9	34	17.3	3	Average	1
Fair River	ES	1981	484	86,000	183.2	29	18.0	1	Average	1
Fair River	ES	1984	312	61,000	163.6	20	16.6	2	Average	1
Fair River	ES	1987	300	48,830	168.1	25	12.0	3	Under	1
Fair River	ES	1988	114	35,370	310.3	12	6.6	1	Under	1
Fair River	ES	1988	559	194,496	347.9	35	16.6	4	Under	1
Fair River	MS	1940	642	74,476	116.0	29	22.1	4	Over	2
Fair River	ES	1984	1211	249,330	206.3	66	18.3	1	Over	2
Fair River	K-12	1889	172	20,000	119.3	8	21.5	2	Over	3
Fair River	HS	1981	679	111,480	166.6	41	16.4	3	Average	1
Fair River	K-8	1988	716	124,690	174.0	35	20.6	2	Average	1
Fair River	MS	1987	622	81,700	131.4	31	20.1	2	Average	1
Fair River	ES	1986	677	182,206	166.3	30	22.6	3	Over	2
Fair River	ES	1937	81	24,400	301.2	12	6.8	3	Under	1

Reports of  
Committees

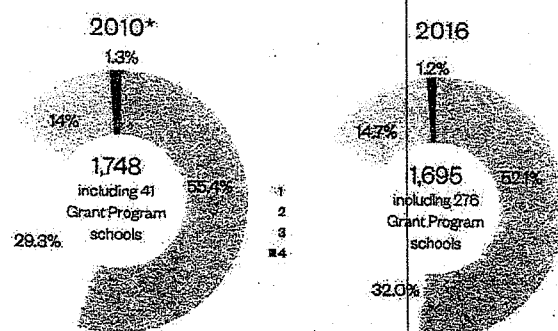
Finance Committee

## BUILDING CONDITION

Schools in Massachusetts are in generally good condition. As shown in Building Condition Chart 1:

- 84.1% of Massachusetts schools received a building condition rating of 1 or 2, meaning that their site and building systems are in generally good condition, with few building systems that may need attention.
- Fewer than 1.2% of schools in the Commonwealth, or 20 schools, received a building condition rating of 4, meaning that they are in poor condition. One school rated a 4 in 2010 received a rating of 4 in 2016.
- 14.7% of schools received an overall building conditions rating of 3, meaning that they may require a moderate to extensive renovation to address the physical deficiencies at those facilities.

Building Condition\*\* Chart 1



\* Condition rating as reported in 2010, does not account for system degradation over time

\*\* Grant Program schools included as 1 Condition Rating

Although the data indicates that schools are in generally good condition, without continued capital expenditures, building conditions and systems continue to degrade, even with proper maintenance, due to the aging of the facility. To further understand the comparison of the survey data between 2010 and 2016 and the potential impact to the building conditions if no investments had been made, an industry standard school facility degradation factor of 2% per year was applied to the building conditions for the schools surveyed in 2010 to account for natural system degradation over the six years since the last survey. Applying the degradation factor, the data on the left of Chart 2, shows what the expected school ratings in 2016 would be if no work had been done on schools. The 2016 survey data on the right side of Chart 2 indicates that there are 34% more schools with ratings of 1's and 2's than would be expected demonstrating the importance of continued capital investments.

Building Condition\*\* Chart 2



\* Condition ratings adjusted for expected system degradation since 2010

\*\* Grant Program schools included as 1 Condition Rating

### Building Condition Evaluation Criteria

Similar to the 2010 survey, a major component of the 2016 School Survey was an assessment of the general conditions of selected site and building systems. In 2010 and 2016, the survey tool was used to rate each of the seven site and eighteen building systems, and gather information on observed conditions. A few of the building systems assessed were changed from 2010 based on MSBA experience of what data is useful and necessary. Changes to the building condition assessment include:

- Site fencing was removed from the general condition assessment.
- Site and building accessibility was relocated from the general condition assessment and is now captured as part of the General Environment data collection.
- Technology was relocated and is now captured as part of the General Environment data collection.
- Water supply was added.
- Septic, sewage, and wastewater disposal systems were added.
- Fire suppression was given its own rating.
- Elevators and lifts were given their own rating.

See Appendix I for full list of systems assessed.

The survey tool used standardized data collection questions and techniques to ensure that the data is consistent and accurate. An overall building score is generated based on the observations of the assessor, information provided by the district, and the ratings for the individual systems listed in Appendix I.

First-hand information was obtained by the assessor whenever possible. If a system was not visible at a particular school, the system condition assessment was provided by the school or district representative. The 2016 School Survey is not a comprehensive facilities assessment; rather, it is a survey to gather general data on major building systems and site conditions.

MSBA - 2016 School Survey Report  
District Summary

District	Enrollment	Total GSF	SF / Student	Total Schools	Schools Assessed in 2016	Master Plan Developed
Fairhaven	2,024	342,204	169	4	2	2011
Fall River	10,163	2,000,368	197	18	9	2004
Falmouth	3,466	793,130	229	7	7	
Farmington River Reg	114	35,370	310	1	1	
Fitchburg	5,272	988,775	188	8	8	2016
Florida	81	24,400	301	1	1	
Foxborough	2,601	554,720	213	5	4	
Framingham	8,375	1,583,831	189	13	11	2015
Franklin	5,281	973,000	184	10	7	2013
Franklin County	488	160,000	328	1	1	
Freetown-Lakeville	2,754	618,210	224	5	5	
Frontier	611	160,500	263	1	1	
Gardner	2,385	491,967	206	5	5	2015
Gateway	841	260,716	310	4	4	
Georgetown	1,108	183,713	166	2	1	2016
Gill-Montague	951	352,815	371	6	5	
Gloucester	2,834	603,770	213	7	6	2014
Gosnold	2	620	310	1	1	
Grafton	3,189	610,670	191	6	6	2005
Granby	756	168,575	223	3	1	2003
Greater Fall River	1,395	295,600	212	1	1	
Greater Lawrence RVT	1,473	365,000	248	1	1	2014
Greater Lowell Voc Tec	2,184	577,000	264	1	1	
Greater New Bedford	2,154	524,954	244	1	1	2006
Greenfield	1,540	439,822	286	6	5	
Groton-Dunstable	1,549	318,241	205	3	3	2001
Hadley	562	123,289	219	2	2	
Halifax	592	117,000	198	1	1	2014
Hamilton-Wenham	1,782	337,870	190	5	5	2014
Hampden-Wilbraham	3,107	650,840	209	7	6	
Hampshire	741	206,000	278	1	1	
Hancock	36	6,800	189	1	1	
Hanover	2,625	413,510	158	5	2	
Harvard	1,117	249,700	224	2	1	2016
Hatfield	442	114,348	259	2	1	2011
Haverhill	7,152	1,128,300	158	13	12	1999
Hawlemont	105	30,000	286	1	1	
Hingham	4,317	643,076	149	6	4	2006
Holbrook	1,170	152,000	130	3	0	2015
Holland	237	34,000	143	1	1	
Holliston	2,889	555,230	192	4	4	
Holyoke	5,344	1,094,413	205	11	11	2002
Hopedale	1,073	134,707	126	2	2	2007
Hopkinton	3,397	540,000	159	5	4	2007
Hudson	2,643	514,997	195	5	4	2005
Hull	930	286,053	308	3	3	2016
Ipswich	1,778	291,032	164	4	2	2014

Reports of  
Committees

Finance Committee

Reports of  
Committees

## Finance Committee

Fitchburg Public Schools  
Strategic Facilities Planning StudyI. INTRODUCTION  
B. Narrative Summary

## Introduction

- Lamoureux Pagano Associates (LPA) was contracted by the Fitchburg Public Schools District to conduct a strategic facility planning study related to development of a Long Range School Facilities Master Plan. The scope of this study encompasses all eight Fitchburg Public Schools (Crocker Elementary School, South Street Elementary School, Reingold Elementary School, McKay Arts Academy, Memorial Middle School, Longsjo Middle School, Fitchburg High School, and Goodrich Academy). LPA was asked to perform the following work:
  - Examine population trends and past, present and future enrollments
  - Assess Fitchburg's present educational facilities in light of enrollment projections and the District's present and future educational programs
  - Conduct appropriate site evaluation study
  - Develop cost-effective options designed to address Fitchburg's present and future space, facility, and comments regarding staffing needs
  - Conduct stakeholder meetings.
- LPA utilized a three-part process consisting of 1) documenting existing conditions, 2) verifying needs/objectives and 3) developing options and recommendations.

## Existing Conditions

- LPA and our consulting engineers visited each school and used a "Good/Fair/Poor" methodology to rate each one in the following categories:
  - Site
  - Exterior Envelope
  - Interior Finishes/Equipment
  - Accessibility
  - Security and Access Control
  - Building Systems
  - Capacity for Expansion
- Meetings were conducted with Staff/Faculty to confirm space use and to identify any site/building issues. LPA also met with other District department heads (Food Services, Technology, etc.) and City public safety officials to identify their issues and concerns.
- Overview of existing conditions
  - Crocker ES, Longsjo MS and North Building at South Street ES are in the poorest condition relative to the other schools. Longsjo MS in particular has suffered from deferred maintenance and, given its site limitations and location, will be a very difficult and costly building to renovate.
  - Fitchburg HS, being the District's most recent building, is understandably in the best condition and requires the least scope of work.



Fitchburg Public Schools

## Strategic Facilities Planning Study

## I. INTRODUCTION

## B. Narrative Summary

- South Street ES (West/South/East Buildings), Reingold ES, Memorial MS and Goodrich Academy fall somewhere in between, having had some fairly recent building system and exterior envelope improvements.
  - McKay Arts Academy is owned by Fitchburg State University, therefore the assumptions were made that it is reasonably well maintained, it meets applicable building codes, and the District will not participate in funding facility upgrades.
  - Crocker ES, South Street ES, and Memorial MS sites offer the greatest potential for significant expansion and/or new construction.
- A summary of existing conditions site/building assessments, by individual school, is below.

				POOR
<b>CROCKER ELEMENTARY SCHOOL</b>				
Site				●
Exterior Envelope				●
Interior Finishes/Equipment				●
Accessibility				●
Security and Access Control				
Building Systems – FP/Plumbing/HVAC				●
Building Systems – Electrical				●
Capacity for Expansion		●		
<b>SOUTH STREET ELEMENTARY SCHOOL</b>				
Site				●
West Building				
Exterior Envelope				
Interior Finishes/Equipment				●
Accessibility				●
Security and Access Control				●
Building Systems – FP/Plumbing/HVAC				
Building Systems – Electrical				●
Capacity for Expansion				●
North Building				
Exterior Envelope				●
Interior Finishes/Equipment				●
Accessibility				●
Security and Access Control				●
Building Systems – FP/Plumbing/HVAC				●
Building Systems – Electrical				●
Capacity for Expansion		●		





Reports of  
Committees

Finance Committee

Fitchburg Public Schools

Strategic Facilities Planning Study

I. INTRODUCTION

B. Narrative Summary

				POOR
South Building				
Exterior Envelope				
Interior Finishes/Equipment				
Accessibility				●
Security and Access Control				●
Building Systems – FP/Plumbing/HVAC				●
Building Systems – Electrical				●
Capacity for Expansion				
East Building				
Exterior Envelope				
Interior Finishes/Equipment				
Accessibility				●
Security and Access Control				●
Building Systems – FP/Plumbing/HVAC				
Building Systems – Electrical				●
Capacity for Expansion				
REINGOLD ELEMENTARY SCHOOL				
Site				
Exterior Envelope		●		
Interior Finishes/Equipment				
Accessibility				●
Security and Access Control				●
Building Systems – FP/Plumbing/HVAC				
Building Systems – Electrical				●
Capacity for Expansion				
MCKAY ARTS ACADEMY				
Site				
Exterior Envelope		●		
Interior Finishes/Equipment		●		
Accessibility		●		
Security and Access Control				
Building Systems – FP/Plumbing/HVAC (NA)				
Building Systems – Electrical (NA)				
Capacity for Expansion				●
MEMORIAL MIDDLE SCHOOL				
Site				●
Exterior Envelope		●		
Interior Finishes/Equipment				●
Accessibility				●



Reports of  
Committees

Finance Committee

Fitchburg Public Schools

# Strategic Facilities Planning Study

I. INTRODUCTION  
B. Narrative Summary

				POOR
<b>MEMORIAL MIDDLE SCHOOL (CONT.)</b>				
Security and Access Control				
Building Systems – FP/Plumbing/HVAC				
Building Systems – Electrical				
Capacity for Expansion		*		
<b>LONGSJO MIDDLE SCHOOL</b>				
Site				•
Exterior Envelope				•
Interior Finishes/Equipment				
Accessibility				•
Security and Access Control				•
Building Systems – FP/Plumbing/HVAC				•
Building Systems – Electrical				•
Capacity for Expansion				•
<b>FITCHBURG HIGH SCHOOL</b>				
Site		*		
Exterior Envelope		*		
Interior Finishes/Equipment		*		
Accessibility		*		
Security and Access Control		*		
Building Systems – FP/Plumbing/HVAC		*		
Building Systems – Electrical		*		
Capacity for Expansion		*		
<b>GOODRICH ACADEMY</b>				
Site				
Exterior Envelope				•
Interior Finishes/Equipment				
Accessibility				•
Security and Access Control				•
Building Systems – FP/Plumbing/HVAC				•
Building Systems – Electrical				•
Capacity for Expansion				•



Reports of  
Committees

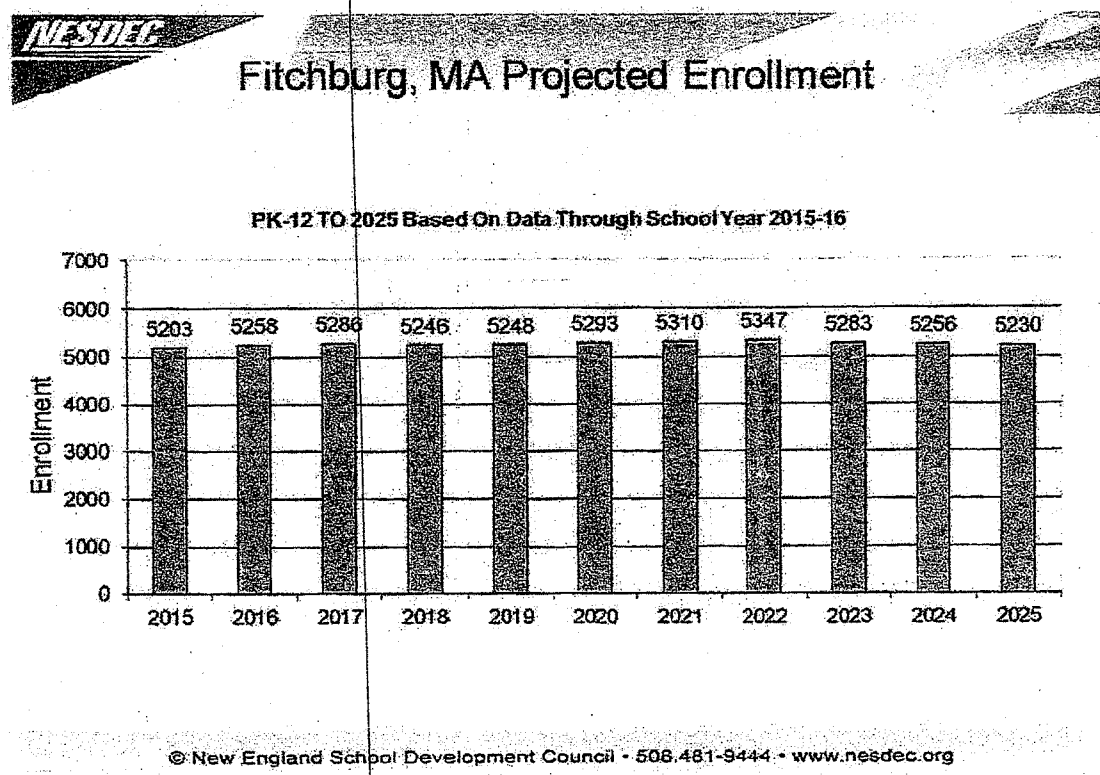
Finance Committee

Fitchburg Public Schools  
**Strategic Facilities Planning Study**

I. INTRODUCTION  
B. Narrative Summary

Needs and Objectives

- This section is a programmatic assessment of each school within the Fitchburg District with the reference of a 21<sup>st</sup> century learning environment. A meeting was held at each school with the principal and special education coordinator to review the extent to which each facility supported the current curriculum.
  - Optimal school size is 600-700 students.
  - Current grade configuration is preferable, although a PreK-8 school may be an option.
  - Site circulation is an issue at many of the facilities, particularly at South Street ES and Longsjo MS.
- The New England School Development Council (NESDEC) was hired, as a sub-consultant to LPA, to examine population trends and past, present and future enrollments.
- NESDEC's report shows no significant increase in District enrollment over the next 10 years. District enrollment as of October 1, 2015 was 5,203 and projected enrollment for 2025 is 5,230; an increase of approximately half of one percent. Refer to Projected Enrollment graphic below.



Fitchburg Public Schools

Strategic Facilities Planning Study

I. INTRODUCTION

B. Narrative Summary

- Historically, the District has seen a significant (up to 30% of the total enrollment) "churn" rate; with relatively equal numbers of students entering and withdrawing/leaving the District over the course of a given school year. For the 2015-2016 school year, NESDEC identified an increase in "choiced-in" students, particularly at the high school grade levels. Whether this is a temporary increase that will reverse itself by the end of the school year, or if this is the beginning of a trend toward students returning to the Fitchburg Public School District, remains to be seen and should be closely monitored.
- Current MSBA Space Guidelines were used to evaluate each school in terms of educational and support areas. At first glance the total existing GSF areas appear adequate; however a closer look at Net Square Foot (NSF) requirements by MSBA category shows that a significant part of the total is dedicated to large core facilities (gyms, locker rooms, auditoriums, stages, etc.), administrative areas, District offices and other non-educational space. Refer to Section B in Part III. Needs and Objectives of this study for comparisons of existing facilities to MSBA Space Summary Template guidelines.

Options and Recommendations

- In general, LPA followed Massachusetts School Building Authority (MSBA) feasibility study guidelines in our study of potential options and solutions. These included Base Repair, Addition/Renovation and New Construction options. The following is a summary of Options A-C; more detailed scope of work descriptions and supporting graphics are included in Part IV. Options and Recommendations.
- OPTION A – BASE REPAIR
  - This option is based generally on repairs to currently occupied areas and therefore does not provide additional educational program space. Over the past decade, the District has utilized MSBA's repair programs to provide exterior envelope (windows, storefront/entries, and roofing) and building system (boilers, controls and distribution) improvements at South Street ES (South and West Buildings), Reingold ES, Memorial MS and Fitchburg HS. Most of the schools, however, have suffered from some level of deferred maintenance; Crocker ES, Longsjo MS and the North Building of South Street ES more so than the others.
  - The Base Repair scope of work described below was derived from the District's FY 2016 Capital Needs Plan, from LPA's and our consulting engineers' observations and assessments of each building, and from anecdotal comments heard during District staff/faculty interviews. The Base Repair Option assumes that the status quo is maintained; the North Building at South Street ES remains unoccupied and there is no change to grade configurations or enrollments at each school. This option will generally not comply with MSBA space guidelines and it should not be assumed that some or all of it will be reimbursable by MSBA.



Reports of  
Committees

## Finance Committee

## Fitchburg Public Schools

## Strategic Facilities Planning Study

I. INTRODUCTION  
B. Narrative Summary

- While LPA assumes that the District would likely categorize the Base Repair scope of work according to level of priority (i.e. mandatory, recommended, and discretionary), the reader should understand that there are multiple factors which, in combination, will influence and ultimately determine the final scope, and cost, of any Base Repair Option. These include, but are not limited to, code-mandated improvements related to accessibility, structural systems seismic resistance, fire suppression systems, and energy conservation.
- The Base Repair Option scope of work is organized by school and the same categories used to assess existing conditions.
- **OPTION B – ADDITION/RENOVATION**
  - Option B – Addition/Renovation assumes that all eight (8) schools remain active, are renovated per the Option A – Base Repair scope described above, and are selectively expanded with additions to Crocker ES and Memorial MS and by the recommissioning of the North Building at South Street ES to meet current MSBA space guidelines.
  - Of the eight schools, LPA identified South Street ES, Crocker ES and Memorial MS as having the greatest potential for significant Addition/Renovation solutions. These three schools have sufficient site capacity to accommodate not only a building addition footprint, but also the support facilities (i.e. temporary modular classrooms, construction trailers, worker parking and access drives, etc.) needed during the construction phase. McKay ES, given that it is owned by FSU, is not a candidate for a building addition; the District has also been advised that there is no more existing space available for their use. Longsjö MS offers virtually no options for expansion because the building footprint occupies almost the entire site.
  - This option assumes that additions at Crocker ES and Memorial MS, and the additional educational space afforded by recommissioning the North Building at South Street ES, will provide sufficient program area to offset minor space deficiencies at the other elementary/middle schools. It also assumes that existing program space at the grade 9-12 level (Fitchburg HS and the Goodrich Academy) is adequate and that additions are not required there.
- **OPTION C – NEW CONSTRUCTION**
  - Option C – New Construction recommends that Longsjö MS be closed, a new 136,900 GSF grade PreK-8 school is constructed on the Crocker ES site, the existing Crocker ES is demolished, the North Building at South Street ES is demolished, a new 50,635 GSF grade 5-8 addition is constructed at South Street ES (on the site of the demolished North Building), and the other five (5) schools remain active and are renovated per the Base Repair scope described previously.



Fitchburg Public Schools

## Strategic Facilities Planning Study

I. INTRODUCTION  
B. Narrative Summary

- o This option assumes that the students displaced by the closing of Longsjo MS will be distributed equally between 1) the new PreK-8 school on the Crocker site, and 2) the new grade 5-8 addition built at South Street ES. Other variations of this option are possible, including the following:
    - Build a new PreK-8 school, on the Crocker site, to accommodate the combined student populations of Crocker ES and Longsjo MS.
    - Construct an addition at Memorial MS, to accommodate half of the displaced Longsjo MS population, instead of building a grade 5-8 addition at South Street ES.
- For comparative purposes, order of magnitude costs were assigned to each option and were based on gross square footage and current 2015 cost estimating data. For purposes of this study, because it involves existing buildings with a high degree of complexity and unknown conditions, LPA assumed that a Chapter 149A Construction Manager at Risk construction delivery method will be utilized. Budget cost recommendations are for construction only and exclude other project costs (i.e. Designer and OPM fees, temporary swing space, escalation, legal fees, contingencies, furnishings/fixtures/equipment, technology/computer equipment, surveys, construction testing, printing, and other typical "soft" costs). Below is an order of magnitude cost summary for Options A-C.

OPTION A - BASE REPAIR ORDER OF MAGNITUDE COST RECOMMENDATIONS		
TOTAL OPTION A - ALL SCHOOLS		\$116,508,200 - \$137,890,200
OPTION B - ADDITION/RENOVATION ORDER OF MAGNITUDE COST RECOMMENDATIONS		
TOTAL OPTION B - ALL SCHOOLS		\$135,004,425 - \$157,354,200
OPTION C - NEW CONSTRUCTION ORDER OF MAGNITUDE COST RECOMMENDATIONS		
TOTAL OPTION C - ALL SCHOOLS		\$133,187,300 - \$149,720,400



Report read and accepted. Order sent to a first reading and ordered advertised by roll call vote of 10 in favor and 0 opposed. 10 members present. Board consists of 10 members.

Reports of  
Committees

Finance Committee

The Finance Committee recommended the following Order be adopted:

006-18. WHEREAS: it is the opinion of the City Council in Resolution 296-17 to support the continuation of the Landfill; and

WHEREAS: the City, through the Health Department, Law Department and the Mayor's Office have met with Waste Management vetted and negotiated the enclosed Memorandum of Understanding and it's exhibits and attachments.

NOW THEREFORE, IT IS ORDERED that the Honorable Stephen L. DiNatale execute and deliver any and all documents necessary, convenient, and helpful to facilitate the intent of the council's approval of Resolution 296-17, including but not limited to the execution of agreements in a form substantially similar to that which is attached.

**MEMORANDUM OF UNDERSTANDING  
AMONG  
THE TOWN OF WESTMINSTER AND  
THE CITY OF FITCHBURG AND  
RESOURCES CONTROL, INC.**

This Memorandum of Understanding (this "Agreement") is hereby entered into by and between the **TOWN OF WESTMINSTER**, a Massachusetts political subdivision ("Westminster" or the "Town"), the **CITY OF FITCHBURG**, a Massachusetts political subdivision ("Fitchburg" or the "City"), and **RESOURCE CONTROL INC.**, a Massachusetts corporation with its primary place of business in Foxboro, Massachusetts ("RCI") (collectively, the "Parties" and each, individually, a "Party").

**WITNESSETH:**

**WHEREAS**, a landfill and recycling transfer station currently exists in Westminster, Massachusetts, on those certain parcels of land as more particularly shown on the plan attached hereto as Exhibit A (the "Existing Landfill");

**WHEREAS**, pursuant to that certain Amended and Restated Solid Waste Disposal Services Agreement entered into by and between Fitchburg, Westminster and RCI, dated June 21, 2010, as amended on January 1, 2016 (the "2010 Agreement"), RCI is the operator and manager of the Existing Landfill;

**WHEREAS**, Westminster and Fitchburg seek to extend the term over which host community fees are paid by RCI to their respective communities, and all the Parties seek ways to extend the term over which RCI is able to offer solid waste disposal services to Westminster, Fitchburg, and the region;

**WHEREAS**, to help achieve those goals, Westminster will petition to acquire from the Commonwealth of Massachusetts land suitable for landfill purposes located adjacent to the Existing Landfill within Leominster State Forest as shown on the plan attached as Exhibit B (the "Continuation Parcel");

**WHEREAS**, the Continuation Parcel is subject to the protection of Article 97 of the Amendments to the Massachusetts Constitution ("Article 97") and its transfer to Westminster will require an act of the General Court passed by a two-thirds roll call vote of both houses;

**WHEREAS**, the Parties agree that time is of the essence under this Agreement and therefore they shall work cooperatively and promptly to take all acts reasonably necessary to allow acquisition of the Continuation Parcel by Westminster and its transfer to RCI for use in the continued provision of solid waste disposal services;

**NOW THEREFORE**, in consideration of the mutual covenants, agreements and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fitchburg, Westminster, and RCI hereby agree



as follows:

1. Swaps and Exchanges

The Parties anticipate that, as consideration for the transfer of the Continuation Parcel to Westminster, Westminster will convey to the Commonwealth of Massachusetts, for forestry and/or conservation purposes, land of equal or greater monetary and environmental value ("Swap Parcels") subject to the terms set forth below.

a. Role of RCI in Acquisition of Swap Parcels. RCI will seek to purchase or acquire options with respect to property suitable for inclusion in Leominster State Forest, or for other uses acceptable to the Commonwealth of Massachusetts (the "RCI Swap Parcels"). The goal is to acquire property which, together with the Westminster Swap Parcel defined below, will constitute land of monetary and environmental value at least equal to that of the Continuation Parcel, as determined by the Commonwealth. If and as Westminster is prepared to acquire the Continuation Parcel from the Commonwealth of Massachusetts, RCI will seek to acquire the RCI Swap Parcels and convey the same to Westminster, and Westminster will in turn convey the RCI Swap Parcels to the Commonwealth of Massachusetts. Alternatively, RCI may contribute some or all of the RCI Swap Parcels directly to the Commonwealth of Massachusetts. In consideration for RCI contributing the RCI Swap Parcels, and RCI entering into the Second Amended and Restated Solid Waste Disposal Services Agreement attached as Exhibit C (the "Continuation Agreement"), Westminster shall convey the Continuation Parcel to RCI subject to a Restrictive Covenant, all as described in the Continuation Agreement.

b. Role of Westminster in Contribution of Swap Parcels. Westminster owns a vacant parcel of unrestricted land described on Exhibit D which is adjacent to Leominster State Forest and suitable for contribution to the Commonwealth of Massachusetts (the "Westminster Swap Parcel"). If the General Court authorizes the transfer of the Continuation Parcel to Westminster and the Commonwealth agrees to acquire the Westminster Swap Parcel, then Westminster will convey the Westminster Swap Parcels and the RCI Swap Parcels, as the case may be, to the Commonwealth of Massachusetts.

c. Taxes. Although the Town will convey the Continuation Parcel to RCI for nominal consideration, the parties agree that the real estate tax value of the Continuation Parcel as of the date of conveyance shall be the fair market value of the Continuation Parcel thereof, as agreed to by Westminster and RCI, and RCI shall, at the closing, pay pro forma in-lieu-of taxes on the Continuation Parcel, as required under GL c. 44, s.63A, on the basis of said real estate tax value. RCI, as the owner of the Continuation Parcel, shall be responsible for real estate taxes assessed on the Continuation Parcel under applicable laws, rules and regulations.

d. Additional Payment to Westminster. RCI shall pay to Westminster Two Hundred and Fifty Thousand Dollars (\$250,000.00) on the first day that any portion of the Continuation Parcel is used for solid waste disposal (the "Additional



Reports of  
Committees

## Finance Committee

Payment"). In turn, Westminster shall accept the Additional Payment in full settlement of any and all claims that Westminster has against RCI as of the date of this Agreement, except those obligations of RCI under the Amended and Restated Solid Waste Disposal Services Agreement entered into on June 21, 2010, as amended on January 1, 2016 and/or under any agreements or documents attached as exhibits thereto.

2. Home Rule Petition; Resolution; Support

a. Westminster. Westminster agrees that its Board of Selectmen intends to include the Home Rule Petition Article substantially in the form attached hereto as Exhibit E in the Town Warrant for the Westminster November 2017 Special Town Meeting, with such changes as the Westminster Board of Selectmen elects to accept. The Home Rule Petition shall include authorization for the change in use of, and the conveyance of, the Continuation Parcel, as required by Article 97 of the Amendments to the Massachusetts Constitution, the Town's acceptance of the RCI Swap Parcels located other than in Westminster, if any, and the conveyance of said Continuation Parcel to RCI notwithstanding G.L. c. 30B. Westminster shall not be required to pay any funds to the Commonwealth or convey to the Commonwealth any Town land other than the Westminster Swap Parcel identified herein.

b. Fitchburg. Fitchburg agrees that its Mayor will sponsor and present the Resolution in support of Westminster's Home Rule Petition attached hereto as Exhibit F, and further, the Mayor will seek to obtain the vote and approval of the City Council for the same before December 1, 2017.

c. Joint Support before State Legislature. Promptly following approval of the Home Rule Petition at Westminster's Town Meeting, and the affirmative vote by the Fitchburg City Council in support of the Resolution, Westminster will request its State Representative to submit the Home Rule Petition to the State Legislature and for its review and consideration during its 2018 Legislative Session, or as soon thereafter as possible. Westminster and Fitchburg further agree to continue to support the Home Rule Petition until the Home Rule Petition is brought to a vote before the General Court and is enacted and signed by the Governor.

3. State and Local Approvalsa. Westminster Town Meeting Articles.

The Parties acknowledge that Westminster's ability to convey the Westminster Swap Parcel and to acquire and convey the RCI Swap Parcels is contingent on Westminster Town Meeting authorization. To accomplish the foregoing, Westminster intends to submit the following articles for a vote at its November Town Meeting and agrees to provide its support and cooperation for the passage of the same:

- i. Home Rule Petition Article. As attached hereto as Exhibit E.
- ii. Zoning Amendment Article. As attached hereto as Exhibit G.

iii. Other Town Meeting Articles. As attached hereto as Exhibit H.

b. Fitchburg Local Approvals. Fitchburg, through its Mayor and City Council, agrees to authorize, approve and execute this Agreement as a binding agreement of Fitchburg, and to adopt the Resolution set forth in Exhibit F, before December 1, 2017.

c. MEPA. Westminster and Fitchburg agree that following the filing of the Home Rule Petition with the General Court, Westminster and Fitchburg shall be the primary proponents for use of the Continuation Parcel for landfill purposes under the Massachusetts Environmental Policy Act, M. G. L. c. 30, Section 61 et seq. and implementing regulations at 301 CMR 11.00 et seq. (collectively "MEPA").

RCI will act as co-proponent and will prepare and file, as agent for Westminster and Fitchburg, all necessary MEPA filings in connection with the proposed acquisition of the Continuation Parcel by Westminster, the subsequent transfer of the Continuation Parcel to Westminster, and ultimate conveyance of the Continuation Parcel to RCI and use of the Continuation Parcel for solid waste management and disposal services as provided in the Continuation Agreement. RCI shall have sole responsibility for the cost, content, and prosecution of any MEPA filings.

d. Massachusetts Department of Environmental Protection ("DEP") and Westminster Board of Health ("BOH"). Westminster and Fitchburg agree to cooperate with and provide written authorization and support for any permitting process for use of the Continuation Parcel as provided in the Continuation Agreement as may be necessary or appropriate prior to acquisition of the Continuation Parcel by Westminster and the conveyance of the Continuation Parcel to RCI. Westminster and Fitchburg further agree to submit letters of support for any and all filings and applications to DEP and/or the BOH made by RCI. RCI shall have sole responsibility for the cost, content, and prosecution of any such permit applications, including any costs that the Town is required to incur in connection with the same.

e. End Use of Continuation Parcel. During the MEPA process, and the BOH site assignment process, RCI will address potential end uses of the Additional Land (as such term is defined in Continuation Agreement) and the Continuation Parcel after the Landfill has been closed. RCI has been informed that Westminster favors end uses that will produce real estate tax revenues for the Town, such as methane gas production, solar power production, or similar uses. RCI will cooperate and consult with the Town, and meet with Westminster at least once, to determine the proposed re-use of the Additional Land and the Continuation Parcel, including pursuing Landfill designs consistent with such end uses to the extent practicable. The Town acknowledges that the Additional Land/Continuation Parcel may be used as a wildlife habitat if required by DEP during the MEPA review process and/or permitting for the Landfill.

4. Continuation Agreement

Reports of  
Committees

## Finance Committee

Simultaneously with the transfer of the Continuation Parcel to Westminster, and the conveyance of the Continuation Parcel to RCI, Westminster, Fitchburg, and RCI agree to execute the Continuation Agreement in the form attached as Exhibit C, together with any modifications agreed upon by the Parties. RCI and Westminster acknowledge that the dollar figures stated in Article V(1)(A) of the Continuation Agreement attached here as Exhibit C reflect the amounts being paid by RCI under the 2010 Agreement as of the date of this Agreement, and that, if said amounts are increased under the 2010 Agreement by the effective date of the Continuation Agreement, Article V(1)(A) of said Continuation Agreement shall be revised to reflect the then-current numbers.

5. Binding Effect.

This Agreement shall be non-binding until and unless: (a) Westminster Town Meeting votes affirmatively on the warrant articles set forth in Section 3.a. in November 2017, and (b) Fitchburg's City Council votes to accept the terms hereof as binding before December 1, 2017. No substantive changes shall be made to the Continuation Agreement unless the Parties consent in advance thereto. Notwithstanding the temporary non-binding nature of the Agreement at its Effective Date, each Party understands and acknowledges that each other Party is reasonably relying on the provisions and terms set forth herein as an intent to enter into binding contracts, and each Party agrees to act in good faith to do so.

6. Notices.

Any notice or communication which may be or is required to be given pursuant to the terms of this Agreement shall be in writing and shall be sent to the respective part at the addresses set forth below, postage prepaid, by certified mail, return receipt requested, by a nationally recognized overnight courier services that provides tracing and proof of receipt or items mailed, or by hand. Notices shall be effective upon receipt. Such notices shall be deemed to have been received one (1) business day after being delivered by hand with evidence of delivery thereof, three (3) days after being sent by registered or certified mail, return receipt requested, or one (1) business day after being deposited with a reputable commercial overnight delivery service, in each case addressed as set forth below. Any Party may change the address to which notices to it shall be sent by a notice sent in accordance with the requirements of this section.

If to Westminster:

Ms. Heather Billings, Chair  
Board of Selectmen  
11 South Street  
Westminster, MA 01473

With a copy to:

Shirin Everett, Esq., Town Counsel  
KP Law, P.C.  
101 Arch Street  
Boston, MA 02110

Reports of  
Committees

Finance Committee

If to Fitchburg:

Mayor Stephen L. DiNatale  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

With a copy to:

Vincent Pusateri, Esq.  
City Solicitor  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

If to Resource Control, Inc.:

Christopher DeSantis  
Area Vice President  
Resource Control, Inc.  
26 Patriot Place, Suite 300  
Foxborough, MA 02035

With a copy to:

Gail Lynch, Esq.  
New England Senior Group Counsel  
Resource Control, Inc.  
4 Liberty Lane West  
Hampton, NH 03842

7. Timing.

Time is of the essence of this Agreement and the agreements referenced herein and attached hereto.

8. Counterparts.

This Agreement may be executed in any number of identical counterparts, and signatures subsequently scanned and copied shall be deemed original.

9. Integration.

This Agreement and the exhibits hereto represent the entire understanding of the Parties hereto with respect to the subject matter hereof and may only be amended by a writing executed by the Parties hereto. All prior negotiations and discussions by and between the Parties hereto with respect to the subject matter hereof are merged herein and superseded hereby.

10. Governing Law; Waiver of Jury Trial.

The laws of the Commonwealth of Massachusetts shall govern the validity, performance

Reports of  
Committees

## Finance Committee

and enforcement of this Agreement. If any Party institutes legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in courts of competent jurisdiction within the Commonwealth of Massachusetts, and the parties hereby waive any right to contest the appropriateness of any action brought in any such court based on lack of personal jurisdiction, improper venue or forum non conveniens. All Parties hereby waive trial by jury in any action, proceeding or counterclaim brought by any Party against any other or any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties created hereby, and/or any claim for injury or damage.

11. No Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

12. Cooperation.

The Parties shall cooperate with one another at reasonable times and on reasonable conditions and shall execute and deliver such instruments and documents as may be necessary in order to fully carry out the intent and purposes of the transactions contemplated hereby.

13. Legal Fees.

To assist Westminster and Fitchburg with the efforts required to carry out this Agreement, RCI agrees as follows:

a. If Westminster incurs legal fees and/or costs in taking any action or filing any documents required to be taken or filed by Westminster in connection with the site assignment process for the Continuation Parcel, and/or such actions and/or documents as RCI may request of Westminster, RCI shall pay 100% of such legal fees within thirty (30) days of presentment of invoices therefor (the "Site Assignment Process").

b. With respect to legal fees/costs incurred by Westminster other than in connection with the Site Assignment Process, RCI shall promptly reimburse Westminster and Fitchburg for 50% of the legal fees reasonably incurred to negotiate and implement this Agreement and any other documents or agreements required thereby, including, without limitation, any recording or filing fees associated therewith, until the Site Assignment Process is completed, the Continuation Parcel is conveyed to RCI, and the Continuation Agreement is signed by the Parties.

14. Business Days.

In the event any date hereunder falls on a Saturday, Sunday or Legal Holiday in the Commonwealth of Massachusetts, the date applicable shall be the next business day. All references herein relating to a "day" shall mean one business day which excludes

Reports of  
Committees

Finance Committee

Saturdays, Sundays and Legal Holidays.

15. Termination.

The Parties recognize that RCI will be making substantial investments under this Agreement with the expectation that this Agreement can be carried out on commercially reasonable terms. Accordingly, RCI shall have the right to terminate this Agreement upon thirty (30) days written notice if it determines in its sole discretion that implementation of this Agreement is no longer commercially reasonable. Notwithstanding such termination, RCI shall be obligated to pay any legal fees/costs due under Section 13 above through the date of termination, and any such necessary legal fees incurred to unwind this Agreement.

16. Construction.

Each provision of this Agreement has been mutually negotiated, prepared and drafted, each party has been represented by legal counsel, and in connection with the construction of any provision hereof or deletions here from, no consideration shall be given to the issue of which party actually prepared, drafted, requested or negotiated any provision or deletion.

17. Waivers.

No waiver shall be binding upon a Party unless in writing and signed by duly authorized representatives of the waiving Party.

Reports of  
Committees

Finance Committee

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as a sealed instrument as of the \_\_\_\_ day of \_\_\_\_, 2017.

Attest:

CITY OF FITCHBURG

[Seal]

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Mayor

Approved as to form:

Approved as to appropriation

By: \_\_\_\_\_  
City Solicitor

By: \_\_\_\_\_  
Auditor

Reports of  
Committees  
  
Finance Committee

Attest:

RESOURCE CONTROL, INC.

[Seal]

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Area Vice President



Reports of  
Committees

Finance Committee

TOWN OF WESTMINSTER  
BOARD OF SELECTMAN

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Reports of  
Committees

Finance Committee

- |           |   |
|-----------|---|
| Exhibit A | Plan of Existing Landfill   |
| Exhibit B | Plan of Continuation Parcel   |
| Exhibit C | Second Amended and Restated Solid Waste Disposal Services Agreement<br>("Continuation Agreement") |
| Exhibit D | Plan of Westminster Swap Parcels  |
| Exhibit E | Home Rule Petition – Westminster  |
| Exhibit F | Resolution – Fitchburg  |
| Exhibit G | Zoning Amendments – Westminster   |
| Exhibit H | Other Town Meeting Articles – Westminster   |

Reports of  
Committees

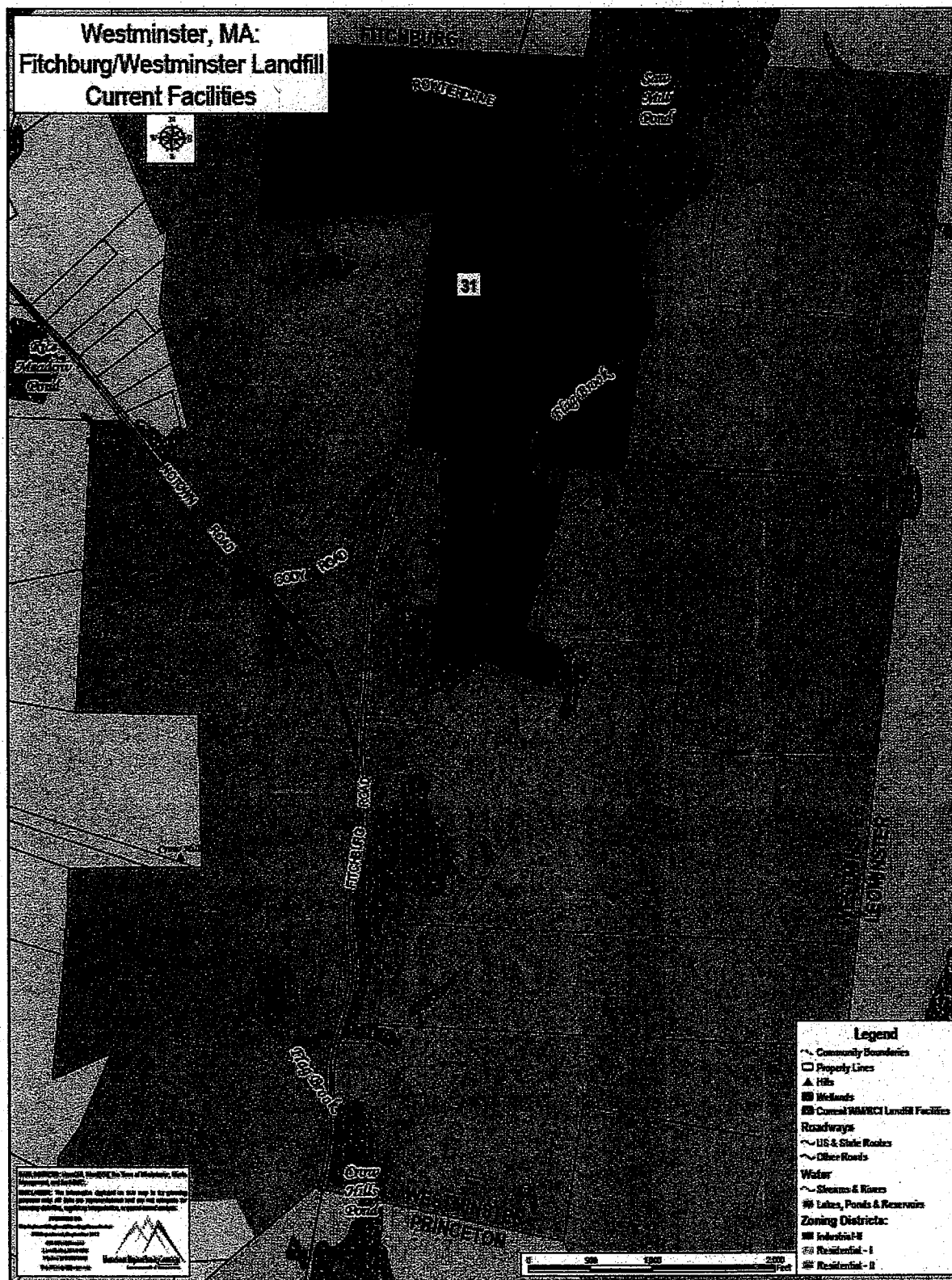
Finance Committee

**EXHIBIT A**

**PLAN OF EXISTING LANDFILL**

Reports of  
Committees

Finance Committee



Finance Committee

# PLAN OF CONTINUATION PARCEL



Reports of  
Committees

Finance Committee

**EXHIBIT C**

**Second Amended and Restated Solid Waste Disposal Services Agreement  
("Continuation Agreement")**

ACTIVE/93242509.5

Reports of  
Committees

Finance Committee

EXECUTION COPY

EXHIBIT C

SECOND AMENDED AND RESTATED  
SOLID WASTE DISPOSAL SERVICES AGREEMENT

City of Fitchburg,  
Town of Westminister,  
and  
Resource Control, Inc.

This Second Amended and Restated Solid Waste Disposal Services Agreement (the "Continuation Agreement") dated \_\_\_\_\_, 2018 ("New Effective Date") made and entered into by and among the City of Fitchburg (the "City"), a Massachusetts political subdivision, the Town of Westminister (the "Town"), a Massachusetts political subdivision, and Resource Control, Inc. ("RCI"), a Massachusetts corporation with its principal place of business in Foxboro, Massachusetts, amending and restating that certain Solid Waste Disposal Services Agreement entered into on February 12, 1992 ("Effective Date") as amended on April 1, 1994, June 1, 1994, November 8, 1994, June 1999, November 4, 2003, May 4, 2006, December 2006, November 14, 2007, and January 2, 2008 (collectively referred to as the "Original Agreement"), and as further amended and restated by an Amended and Restated Solid Waste Disposal Services Agreement entered into on June 21, 2010, as amended on January 1, 2016 (the "2010 Agreement").

RECITALS

WHEREAS, the City owns a landfill (the "Original Landfill") located in the Town of Westminister, as more fully described and authorized in Chapter 323 of the Massachusetts Acts of 1970, and the Landfill was managed and operated by RCI prior to the Effective Date;

WHEREAS, the City publicly advertised for proposals for the development of a full service, solid waste disposal operation and has selected RCI as the preferred proposing party and with the Town entered into the Original Agreement pursuant to which RCI provides solid waste disposal, recycling and composting services for the City, the Town and others;

WHEREAS, RCI owns approximately forty acres of land adjacent to the Landfill acquired by deed of Simpson dated April 12, 1990 and recorded in the Northern Worcester County Registry of Deeds at Book 1957, Page 53 (the "40 Acre Parcel") and an additional parcel of land consisting of 30 acres, more or less, acquired by deed of Estabrook, dated August 25, 1995, and recorded in the Northern Worcester County Registry of Deeds at Book 2749, Page 287 (together with the 40 Acre Parcel, the "Additional Land");

WHEREAS, RCI, the City and the Town extended the Term of the Original Agreement to allow for the full utilization of the Additional Land;

WHEREAS, with the help of RCI, the Town intends to exchange land with the Commonwealth of Massachusetts to allow its acquisition of approximately 85 acres adjacent to the Additional

Land (the "Continuation Parcel") which will allow continued provision of solid waste services by RCI during the Term of this Continuation Agreement; and

WHEREAS, the Original Landfill, the Additional Land, and the Continuation Parcel are collectively herewith referred to as the "Landfill".

THEREFORE, in consideration of the mutual promises and covenants contained in this Continuation Agreement and of other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto, intending to be bound hereby, do covenant and agree as follows:

ARTICLE I  
DEFINITIONS AND RULES OF CONSTRUCTION

1. Specific Definitions.

As used in this Continuation Agreement, the following terms shall have the meaning stated herein unless a different meaning shall clearly appear from the context in which they are used:

"Acceptable Solid Waste" means mixed residential, commercial and municipal solid waste of type and composition not materially different from all or any part of that normally generated by household, commercial and municipal activities conducted in the City and the Town as of the Effective Date and such industrial solid waste as may be legally landfilled under state and federal law and regulation from time to time without special processing or handling. Acceptable Solid Waste shall not include any material which may be legally used for landfill cover in connection with Landfill operations. Acceptable Solid Waste shall also not include any waste defined as hazardous in 40 CFR 5261.3, or any successor regulation, or any radioactive waste or materials regulated under 42 U.S.C. §§6921-6925 and any regulations adopted hereunder, or any hazardous substances as defined in 42 U.S.C. §§9601 et sec. and any regulations adopted hereunder or any material classed as hazardous and prohibited from landfill disposal by state law or regulation applicable to the Landfill. To the extent that hazardous waste included in and constituting a part of residential waste may under applicable law and regulation, including under 40 CFR §261.4, or any successor regulation, be accepted for landfill disposal, such waste shall not be excluded from the definition of "Acceptable Solid Waste".

"Additional Land" - see the third recital paragraph of this Continuation Agreement for a description thereof.

"Additional Supplemental City Benefit" - see Article V, Section 1, Paragraph B(1).

"Additional Supplemental Town Benefit" - see Article V, Section 1, Paragraph A(4).

"City" - see the first paragraph of this Continuation Agreement.

"City Acceptable Solid Waste" means (i) all Acceptable Solid Waste generated by residences in the City, including all multi-family housing units of not more than eight (8) units, and (ii) all Acceptable Solid Waste generated by the City and all of its departments and authorities, including without limitation the City public schools and school department, public housing



Reports of  
Committees

## Finance Committee

authority and its housing units, department of public works and fire department. Acceptable Solid Waste generated by the City shall not include any commercially, industrially or institutionally generated wastes, any hazardous wastes, any material that would not typically be suitable for residential curb side collection (except for bulky residential items), any construction or demolition material, any wastes that are banned for disposal in a municipal solid waste landfill by the Massachusetts Department of Environmental Protection, or any similar wastes of any type that are generated by sources other than those listed above.

"Continuation Agreement" - see the first paragraph of this document.

"Continuation Parcel" - see the sixth paragraph of this Continuation Agreement.

"Environmental Laws" means any and all laws now in force or subsequently enacted, modified or amended pertaining to the protection of the environment or to health or safety risks arising from water pollution, groundwater pollution and the generation, manufacture, management, handling, use, sale, transportation, delivery, discharge, emission, treatment, storage, disposal or release or threatened release of oil, solid or hazardous waste, or hazardous materials, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA"); the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* ("RCRA"); the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 (signed into law October 17, 1986) ("SARA"); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.* ("TSCA"); the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*; the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E; the Massachusetts Toxic Use Reduction Act, M.G.L. c. 21I; and the Underground Storage Tank Petroleum Product Cleanup Fund M.G.L. c. 21J.

"Establishment Act" means Chapter 323 of the Massachusetts Acts of 1970, as amended by Chapter 531 of the Acts of 1991, and as further amended in Chapter \_\_\_ of the Acts of 2018, pursuant to which this Continuation Agreement is authorized.

"Guarantor" means Waste Management of Massachusetts, Inc.

"Landfill" - see seventh paragraph of this Continuation Agreement.

"Leachate Agreement" - see Attachment 4 and Article XII, Section 2.

"Original Landfill" - see the first Recital paragraph of this Continuation Agreement.

"Permitted Capacity" means permitted capacity remaining in the Additional Land and the Continuation Parcel, as from time to time amended during the Term of this Continuation Agreement, inclusive of permits to operate issued by the Massachusetts Department of Environmental Protection.

"RCI" - see the first paragraph of this Continuation Agreement.

Reports of  
Committees

Finance Committee

"Rules of Operations" means the provisions relating to all solid waste disposal operations contained herein in Article VII.

"Supplemental City Benefit" - see Article V, Section 1, Paragraph B(1).

"Supplemental Town Benefit" - see Article V, Section 1, Paragraph A(4).

"Term" - see Article X, Section 1.

"Town" - see the first paragraph of this Continuation Agreement.

"Town Acceptable Solid Waste" means all Acceptable Solid Waste generated by (i) residences in the Town, including all multi-family housing units of not more than eight (8) units, multi-family housing units with more than eight (8) units which are either publicly owned or operated or publicly subsidized, and (ii) the Town and all of its departments and authorities, including without limitation public schools located wholly within the Town (whether Town owned or part of a regional school district), the Town department of public works and the Town fire department. Acceptable Solid Waste generated by the Town, shall not include any commercially, industrially or institutionally generated wastes, any hazardous wastes, any material that would not typically be suitable for residential curb side collection (except for bulky residential items), any construction or demolition material (except small quantities not exceeding two 55 gallon containers delivered in residential vehicles to the Drop Off Center, as hereinafter defined), any wastes of any type that are collected by a commercial hauler or private contractor, any wastes that are banned for disposal in a municipal solid waste landfill by the Massachusetts Department of Environmental Protection, or any similar wastes of any type that are generated by sources other than those listed above.

2. Rules of Construction.

References to article, section and paragraph numbers shall refer to articles, sections and paragraphs in this Continuation Agreement unless reference to another document is clearly stated and shall be solely for convenience of reference and shall not affect the meaning or the construction, interpretation or effect of this Continuation Agreement. The singular shall include the plural unless the context clearly indicates otherwise. All exhibits attached hereto are incorporated herein by reference but to the extent of and conflict between an exhibit and this Continuation Agreement, the terms of this Continuation Agreement shall govern.

ARTICLE II  
IMPLEMENTATION SCHEDULE

1. Landfill Operations.

A. Commencement. From and after the Effective Date, RCI shall assume full responsibility for all aspects of Landfill development, permitting, management, operation and closure as specified herein, in accordance with all Rules of Operations and in compliance with all applicable state and federal laws, regulations and permit requirements.

Reports of  
Committees

Finance Committee

B. Permits. As necessary to ensure the continuous availability of the Landfill for disposal for all City Acceptable Solid Waste and Town Acceptable Solid Waste, RCI shall submit and maintain determinations, permits and approvals necessary for RCI to perform its obligations under this Continuation Agreement.

2. INTENTIONALLY OMITTED.

ARTICLE III  
SERVICES TO BE PROVIDED

1. Disposal of Solid Waste and Other Material.

A. Recycling. Throughout the duration of RCI's landfilling operations at the Landfill, RCI shall provide, either itself or through contract with others, as RCI shall determine, curb-side pick-up of source separated recyclable materials (with all recyclable materials to be commingled in one container) from residential properties in the City and Town (including multi-family housing units of not more than eight (8) units, and publicly owned or operated or subsidized family housing located within the Town with more than eight (8) units). Such collection program shall include a pick-up schedule of once a week for the Town, and every other week for the City and shall be implemented through the cooperation and consultation process described in Paragraph G below. RCI shall not be required to operate any specific recycling program or to recycle any specific class of material, which, in its judgment, exercised in good faith, is not economically self-sufficient and capable of providing a reasonable return on investment, although RCI shall remain obligated to collect from such residential properties commingled bottles, cans, newspapers and plastics (numbered 1-8), and RCI shall remain solely responsible for the disposal of such material.

B. Composting. RCI shall, in accordance with the Rules of Operation, conduct composting operations, which may consist of (i) separate receiving areas for compostable material, such as leaves, yard waste and nitrogenous additives (approved by the City); (ii) handling and sorting facilities suitable for receiving, sorting and processing compostable material, (iii) composting areas, including windrow or in-vessel areas, which may be covered or exposed, as RCI shall determine is most suitable for the type of material and process which is being utilized; and (iv) transfer and storage facilities related to composting programs. RCI shall conduct composting operations utilizing compostable material obtained, in order of priority, (i) from sources within the City and the Town generating City Acceptable Solid Waste and Town Acceptable Solid Waste; (ii) from other sources within the City and Town; (iii) from elsewhere within the Commonwealth; and (iv) from other sources, provided that RCI shall not accept for composting sewage sludge from outside of Worcester County, Massachusetts, without the prior written consent of the City Health Director. In the event that a composting program is established which cannot accept the entire volume of compostable materials which would otherwise participate in such program, priority shall be given to such material in the order stated above. RCI shall provide for such composting of leaves and yard waste originating in the City and the Town as shall be required by this Continuation Agreement and the mandate of any

Reports of  
Committees

Finance Committee

state or federal law or regulation but otherwise shall not be required to operate any composting program which, in its judgment, exercised in good faith, is not economically self-sufficient and capable of providing a reasonable return on investment although RCI shall remain responsible for the disposal of such material.

C. Landfill.

(1) RCI shall, in accordance with the Rules of Operation, conduct solid waste disposal landfill operations at the Landfill, which shall accept all City Acceptable Solid Waste and Town Acceptable Solid Waste and, subject to Article III, Section 1 hereof, Acceptable Solid Waste from other sources up to, but not in excess of, an annual average as allowed under applicable Landfill permits. In the event that the Landfill is unable to accept the full amount of Acceptable Solid Waste which would otherwise be disposed of thereat, RCI shall ensure that the City Acceptable Solid Waste and Town Acceptable Solid Waste shall be disposed of at the Landfill before waste from other sources is accepted for disposal at the Landfill.

Except as provided in Article VIII, to the full extent of its legal capacity to accept and dispose of Acceptable Solid Waste, the obligation of RCI to provide or disposal of City Acceptable Solid Waste and Town Acceptable Solid Waste shall be absolute and shall not be excused by any factor.

(2) The City has informed RCI that as of the Effective Date (with the exception of the Establishment Act) there are no City by-laws, ordinances, rules or regulations that restrict sources or amounts of Acceptable Solid Waste which may be disposed of at the Landfill. The Town has informed RCI that as of the Effective Date (with the exception of the Establishment Act) neither the site assignment nor any Town by-laws, ordinances, rules or regulations, including any board of health rules, restrict sources or amount of Acceptable Solid Waste which may be disposed of at the Landfill. Based on the foregoing, RCI has informed the City and Town that no governmental determinations, approvals, permits or amendments thereto are necessary for disposal at the Landfill of Acceptable Solid Waste from sources other than within the City and Town or for additional tonnage in excess of the levels disposed of by the City and Town as of the Effective Date. RCI shall be fully responsible in the event that any such governmental action is necessary for such expanded use.

D. Household Hazardous Waste Days. Throughout the term of this Continuation Agreement, RCI shall sponsor two household hazardous collection days each year, which will be located at the Landfill or at a regional location to be determined by RCI. On such days, RCI shall make provision for residents of the City and Town to deliver for disposal such amounts and types of hazardous waste as are ordinarily generated in connection with residential activities by residential occupants.

The expense of such days, including the expense of legal disposal of all waste collected during such days, shall be borne solely by RCI.

Reports of  
Committees

## Finance Committee

E. Waste Bans. At all times RCI shall comply with any and all waste bans, so-called, including under 310 CMR 19.017 or any successor regulation, pursuant to which certain waste materials are prohibited from landfill disposal. Pursuant to applicable law, regulations and permit conditions, RCI shall accept at the Landfill all such waste generated from sources in the City and Town that generate City Acceptable Solid Waste and Town Acceptable Waste respectively and shall dispose of that waste in such manner, including recycling or re-use, as may be required or permitted by applicable laws and regulations.

F. INTENTIONALLY OMITTED.

G. Cooperation and Consultation. RCI and the City and Town shall work together, in good faith, to develop regulations, standards and procedures for residential recycling programs. Such regulations, standards and procedures shall include provisions relating to the types of material to be collected, the manner of its separation and packaging, the timing of collections provided under Article III, Section 1, Paragraph A and such other matters as may be required for the safe and sanitary operation of recycling programs at the Landfill. In addition, RCI shall, at the request of the City, from time to time, assist the City in connection with planning and analysis related to waste disposal problems beyond the scope of this Continuation Agreement, such as sewage sludge disposal and composting (beyond composting as set forth in Article III, Section 1, Paragraph B). RCI shall advise and assist the City and the Town in setting up systems or methods to encourage source separation and recycling, including citizen education activities, municipal ordinances relating to flow control, waste bans and mandatory source separation and statutory initiatives.

H. INTENTIONALLY OMITTED.

I. Residential Drop Off Center. RCI will operate a residential solid waste drop off center (the "Drop Off Center") for the exclusive use of the residents of the Town on an approximately seven acre portion of the real property north of the Landfill currently owned by RCI and known as Lot 123 on the Town Assessor's Map No. 7, (the "Drop Off Center Land"). The Drop Off Center Land is located immediately adjacent to real property owned by the Town and is shown on Schedule B. RCI will permit and operate the Drop Off Center for the exclusive use of residents of the Town. RCI will be responsible for enforcing all waste bans on disposal and transfer of municipal solid waste that are adopted by the Massachusetts Department of Environmental Protection ("DEP"). In addition RCI will transfer from the Drop Off Center all such collected Town Acceptable Solid Waste for disposal, without cost to the Town throughout the duration of RCI's landfilling operations at the Landfill. The Town shall pay RCI the monthly fee computed in accordance with Schedule A which is attached hereto and incorporated by reference herein to operate the Drop Off Center. The amount of such fee shall be credited on a monthly basis against the Town Host Community Payment otherwise due under Article V, Section 1, Paragraph A of the Continuation Agreement. The Town reserves the right at any time to operate the Drop Off Center with thirty days prior written notification to RCI. The Town may direct RCI to transfer ownership of the Drop Off Center and Drop Off Center Land to the Town at any time during the term of this Continuation Agreement. In the event that the Town notifies RCI of its intent to operate the Drop Off Center, RCI will provide roll off boxes for the Town's use at the Drop Off Center and RCI shall continue to pick up from the Drop Off Center all such collected Town Acceptable Solid Waste for disposal without cost to the Town throughout the

duration of RCI's landfilling operation at the Landfill and the Town shall then become responsible to enforce all waste bans on disposal and transfer of solid waste that are adopted by DEP.

2. Management and Closure of Landfill.

A. INTENTIONALLY OMITTED.

B. Closure. RCI shall be responsible for all closure activities which occur or are required by state or federal regulations to be performed during the term or prior to the termination of this Continuation Agreement. Closure activities shall apply to the Landfill area utilized by RCI during the term of this Continuation Agreement; provided, however, that RCI shall not be required to provide closure beyond that which is required for then existing and working areas of the Landfill as of the date of this Continuation Agreement terminates, except for a termination by the City upon an Event of Default by RCI pursuant to Article XI, Section 2, Paragraph B hereof. RCI shall not be required to provide final closure and cap to any area of the Landfill which continues to be used for disposal of waste as explicitly allowed under then existing permits and approvals as of the termination of this Continuation Agreement and RCI will be responsible for post-closure monitoring activities at the Landfill for thirty (30) years from closure, or such other period authorized by applicable law.

C. Limitations. The City acknowledges that its use of the Landfill antedates RCI's involvement and that RCI's responsibilities hereunder are based on the assumption that the Landfill has not been used other than for the disposal of municipal solid waste and commercial and industrial waste under then applicable laws, regulations and permits. RCI acknowledges that it operated and managed the Landfill prior to the Effective Date and agrees that its responsibilities and obligations hereunder shall not be excused for any reason on account of its prior actions or omissions.

ARTICLE IV  
DISPOSAL FEES

1. Base Fee for City Waste.

For each ton of City Acceptable Solid Waste delivered by or on behalf of the City to the Landfill up to an aggregate limit of 25,000 tons per year, the City shall pay to RCI the sum of \$38.00 per ton (the "Base Fee"). The Base Fee shall be adjusted annually on July 1<sup>st</sup> commencing July 1, 2010, by fifty percent (50%) of the increase (or decrease) over the preceding twelve months in the Consumer Price Index for Urban Wage Earnings and Clerical Workers (CPI-W), Boston, Massachusetts, all items, (1982-84 = 100) and any successor indexes thereto. For each ton of City Acceptable Solid Waste delivered by the City to the Landfill in excess of the limits stated in this paragraph up to any legal limit imposed on Landfill operations by state or federal regulations, the City shall pay to RCI an amount per ton equal to the average per ton amount charged by RCI during the period of the overage to commercial haulers without long-term contracts with RCI. The City shall be charged the same amount per ton of City Acceptable Solid Waste regardless of the method of disposition or disposal chosen by RCI and regardless of whether that method requires additional handling and processing in connection with any

Reports of  
Committees

Finance Committee

recycling or composting operation. RCI's sole compensation for such additional handling and processing shall be from RCI's sale or other utilization of the resulting material. Material collected by RCI as part of curb-side collection of recyclables from residential properties in the City shall be charged to the City at the disposal fee paid by the City for disposal of City Acceptable Solid Waste hereunder, and shall not be included in the quantity of City Acceptable Solid Waste which may be delivered at the Base Fee. RCI shall impose no additional charge or fee on the City or on the owner or occupant of any residential property for curb-side collection of such recyclable material. Notwithstanding the foregoing, continuing for such time as RCI is accepting Acceptable Solid Waste for landfilling upon the Landfill, RCI shall, to the extent authorized by law, permit each resident of the City to transport to the Landfill in a non-commercial vehicle City Acceptable Solid Waste and residentially generated and separated recyclables (specifically the following residentially generated recyclables that are banned from solid waste landfill disposal by Massachusetts DEP as of August, 2003: recyclable paper, aluminum containers, metal or glass containers, white goods, leaves and yard waste, lead batteries, cathode ray tubes, and tires, and to the extent acceptance at the Landfill is authorized by law, used motor oil and paint) from his/her own household on two designated days each week, and RCI will accept such City Acceptable Solid Waste and recyclables for disposal or recycling without charge. City residents transporting such materials to the Landfill will be required to show proof of residency at the Landfill to participate in this drop-off program. At such time that RCI no longer accepts material for landfilling upon the Landfill on a permanent basis, RCI shall convey to the City for nominal consideration (i.e., \$1.00) a fee ownership interest in any active portion of the drop-off area owned by RCI that is necessary for the continuation of this program by the City.

2. No Fee for Town Acceptable Solid Waste.

During such time as RCI is accepting Acceptable Solid Waste for landfilling upon the Landfill, the Town shall not be charged any amount for the collection by RCI or its subcontractor of recyclables from residential properties in the Town, or for the disposal of Town Acceptable Solid Waste in accordance with the provisions of Article III, Section 1, Paragraph A above.

3. Additional Fees for Special Services.

From time to time the City may request in writing that RCI perform special services, related to but beyond the scope of this Continuation Agreement, such as providing sewage sludge disposal or composting (beyond composting as set forth in Article III, Section 1, Paragraph B). In response to such written requests under this paragraph, RCI shall meet with the City Health Director and shall make good faith efforts to assist the City with the specifications of such request and in evaluating its potential cost. Thereafter, if the City elects to proceed and so informs RCI in writing, RCI shall prepare a specific plan showing how it proposes to implement such request and the estimated cost thereof, together with an RCI proposal on how the cost might be paid or recovered. Payment or recovery methods to be proposed by RCI may include but are not limited to payment by the City directly, payment over time through adjustments to the disposal fee, off-set against additional benefits to RCI such as permission to increase landfilling of waste tonnage from other sources beyond the limits of Article III, Section 1, Paragraph C. The City may accept the RCI proposal, which acceptance shall be in writing signed by the City Health Director, whereupon RCI shall carry-out the requested action and the City shall pay in



accordance with the RCI proposal; or the City may reject the RCI proposal and either discontinue the request or ask RCI to provide an additional proposal.

4. Invoice and Payment.

A. Monthly Invoice and Report. RCI shall submit to the City a monthly invoice showing the tonnage of City Acceptable Solid Waste delivered during the month in question and calculating the amount due to RCI from the City as a disposal fee on account thereof. Said invoice shall be accompanied by a report showing total solid waste management activities for the month in question and for the year to date, including (i) tonnage of waste delivered by type or source, (ii) estimated or actual disposition among recycling, composting and landfilling operations, (iii) amounts of recycled materials or compost sold or otherwise disposed of, (iv) the City Host Community Fee, (v) Town Host Community Fee, and (vi) such other information concerning Landfill, recycling and composting operations and expenses as the City may reasonably request. The disposal fee due on each monthly invoice shall be the base fee and any special fees calculated as provided in Section 3 of this Article as reduced by the City Host Community Fee as calculated as provided in Article V.

B. Monthly Payment. The City shall pay all monthly invoices within forty-five (45) days of receipt. Any invoice not paid within forty-five (45) days shall bear interest at RCI's marginal borrowing rate, from time to time, not as a penalty but as compensation for the cost of money to RCI.

C. Annual Accounting and Report. Within ninety (90) days of the end of each calendar year, RCI shall prepare and deliver to the City and Town an annual report which shows in detail all Landfill, recycling and compositing activities, total quantities and sources of waste disposed, City changes and City and Town Host Community Fees for the preceding year, a topographic survey, updated annually, showing the active Landfill area used for waste disposal during the previous year, and an annual update of RCI's projections for remaining landfill cell operating life and site disposal capacity, together with the annual solid waste report filed with the Massachusetts Department of Environmental Protection. The City and/or the Town shall have the right at any time upon written notice to audit the books and records of RCI at the Town's or City's cost. Upon receipt of such notice, RCI shall cooperate fully with the City and/or the Town and its auditors and shall make available to such auditors during such audit all of its books and records and its responsible financial officers and employees at its offices in Foxboro, Massachusetts during its regular business hours.

ARTICLE V  
HOST COMMUNITY FEES AND EQUITY PARTICIPATION

1. Host Community Fees.

A. Town Host Community Payment. RCI will pay to the Town monthly, forty-five days in arrears, an amount equal to the greater of (1) or (2) below plus amounts due under (3), (4), and (6) (and any payments due to the Town hereunder, if not paid within fifteen (15) days from the due date, shall bear interest from the due date at the rate of ten percent (10%) per annum on the overdue amount unpaid):



Reports of  
Committees

## Finance Committee

(1) (a) for the first 7,800 tons of Acceptable Solid Waste disposed of in the Landfill in the preceding month, a payment equal to 100% of the payments in lieu of taxes as set forth in G.L. c. 16, Sec. 24A, as amended through April 1, 1994, but with continuing annual percentage increases therein provided (the applicable per-ton rate is \$2.81 per ton as of the New Effective Date); plus (b) for all tonnage in excess of 7,800 tons of municipal solid waste disposed of in the Landfill in the preceding month, a payment computed at 160% of the per-ton rate assessed on the first 7,800 tons; or, in lieu of the foregoing, such other payment as may be agreed to between RCI and the Town, with the consent of the City, but based solely upon the tonnage of Acceptable Solid Waste deposited in the Landfill. For the purposes of this Section 1, Acceptable Solid Waste of the City of Fitchburg and the Town of Westminster shall not be included in making the foregoing calculations; or

(2) one twelfth (1/12) of a base annual fee (the "Town Base Host Fee"), which shall be two hundred sixty three thousand sixteen (\$236,016) as of the New Effective Date increased by the same percentage increase applicable to the payment in lieu of taxes established in G.L. c.16, §24A (the index being the percentage increase of the Boston Consumer Price Index for all urban consumers for the twelve month period ending the previous October first; and

(3) an amount equal to \$12.15, as of the New Effective Date (the "Supplemental Town Benefit") multiplied by the number of tons of Acceptable Solid Waste (excluding Town and City Acceptable Solid Waste) landfilled upon the Landfill in excess of 500 tons per day and up to 950 tons per day, calculated on a monthly average, such amount to be adjusted annually on July 1 each year commencing on July 1, 2010 to reflect fifty (50) percent of the increase (or decrease) over the preceding year in the Consumer Price Index for Urban Wage Earnings and Clerical Workers (CPI-W), Boston, Massachusetts, all items or any equivalent successor index thereto agreed to by the parties; and

(4) an amount equal to \$8.55 per ton (the "Additional Supplemental Town Benefit") multiplied by the number of tons of Acceptable Solid Waste (excluding Town and City Acceptable Solid Waste) landfilled upon the Landfill in excess of 950 tons per day, calculated on a monthly average, such amount to be adjusted annually on July 1 of each year to reflect fifty (50) percent of the increase (or decrease) over the preceding year in the Consumer Price index for Urban Wage Earnings and Clerical Workers (CPI-W), Boston, Massachusetts, all items, or any equivalent successor index thereto agreed to by the parties.

(5) No amount under subparagraphs (1) through (4) above shall be paid for any share of revenues from the receipt of earthen or processed material for use as daily or intermediate landfill cover.

(6) In addition to the payments set forth above, RCI will pay to the Town monthly, forty-five (45) days in arrears, the amount equal to the result of the following calculation:

Reports of  
Committees

Finance Committee

\$20,830.83/month

Provided that:

On September 1, 2012, such payments increased to \$33,333 per calendar month, which payments shall continue for such time as RCI is accepting Acceptable Solid Waste for landfilling.

The amounts so paid will be used by the Town exclusively for the funding of residential waste collection, drop-off, removal, disposal and recycling services for residents of the Town.

Provided that any payments required under (1), (2), (3), (4), and (6) above are made, the Town agrees that said payments are in full satisfaction of all its rights or claims pursuant to G.L. c. 16, Section 24A, as amended from time to time, or otherwise for any fee, payment or tax based upon the reclaiming, recycling, composting, sorting, treatment or other form of processing of solid waste at the Landfill or any other facilities utilized by RCI for purposes of this Continuation Agreement.

B. City Host Community Payment. RCI will pay to the City a fee ("City Host Community Fee") equal to the greater of (1) or (2):

(1) Host Community Fees.

- (i) The quantity of (i) tons of Acceptable Solid Waste (excluding City Acceptable Solid Waste and Town Acceptable Solid Waste), which is disposed of by landfilling at the Landfill multiplied by (ii) the monthly average tipping fees for the month in question charged by RCI or its affiliate for landfill disposal of waste supplied by commercial haulers at the Landfill and the landfill operated by it in Barre, Massachusetts, multiplied by (iii) ten percent (10%); plus (iv) four (\$4.00) dollars for each ton of Acceptable Solid Waste over three hundred (300) tons per day disposed of by landfilling at the Landfill up to five hundred (500) tons of Acceptable Solid Waste per day calculated on a monthly average;
- (ii) an amount equal to \$4.34 as of the New Effective Date (the "Supplemental City Benefit") multiplied by the number of tons of Acceptable Solid Waste (excluding Town and City Acceptable Solid Waste) landfilled in excess of 500 tons per day up to 950 tons per day, calculated on a monthly average;

Reports of  
Committees

## Finance Committee

(iii) an amount equal to \$8.51 per ton as of the New Effective Date (the "Additional Supplemental City Benefit") multiplied by the number of tons of Acceptable Solid Waste (excluding Town and City Acceptable Solid Waste) landfilled upon the Landfill in excess of 950 tons per day, calculated on a monthly average; and

(iv) the amount of \$8,333.33, representing a sharing of anticipated revenues from the receipt of earthen or processed material for use as daily or intermediate cover, provided that such amount will be reduced to \$4,166.66 for any calendar year following a year in which RCI's use of earthen or processed material for daily or intermediate cover drops below fifteen (15) percent, by weight, of total Landfill receipts of Acceptable Solid Waste.

The Supplemental City Benefit and the Additional Supplemental City Benefit shall be adjusted annually on July 1<sup>st</sup> commencing July 1, 2010 to reflect fifty (50) percent of the increase (or decrease) over the preceding year in the Consumer Price Index for Urban Wage Earnings and Clerical Workers (CPI-W), Boston, Massachusetts, all items, or any equivalent successor index thereto -agreed to by the parties; or

(2) one twelfth (1/12) of a base annual fee (the "City Base Host Payment"), computed in accordance with the following:

The City Base Host Payment which shall be \$302,615.16, as of the New Effective Date increased by the same percentage increase applicable to the payment in lieu of taxes established in G.L. c.16 § 24A (the index being the percentage increase of the Boston Consumer Price Index for all urban consumers for the twelve month period ending in the previous October first).

In consideration of the foregoing, the City expressly waives and relinquishes any right or claim to any payment under G.L. c.16 § 24A, as amended from time to time, or otherwise for any fee, payment or tax based on the reclaiming, recycling, composting, sorting, treatment or other form of processing of solid waste at the Landfill or any facilities utilized by RCI for the purposes of this Continuation Agreement.

Such payment will be made monthly as a credit against amounts due from the City to RCI and if no amount is due from the City to RCI such payment will be made by RCI at the time that the monthly statement and report is submitted.

2. INTENTIONALLY OMITTED.
3. INTENTIONALLY OMITTED.
4. Scalemaster.

RCI shall pay to the City a sum equal to the annual salary of the scalemaster. This sum shall be paid in monthly installments or at such other times as the City and RCI may agree upon. Payment of this sum shall not alter the employer - employee relationship between the City and its scalemaster, nor shall such payment make the scalemaster the employee of RCI.

ARTICLE VI  
SITE RETURN; DEED AND RESTRICTIVE COVENANT.

1. Deed and Restrictive Covenant.

Simultaneously with execution of this Continuation Agreement, the Town shall convey to RCI fee simple title to the Continuation Parcel, subject to a restrictive covenant that the Additional Land and the Continuation Parcel shall be used solely for the purposes of providing solid waste management and disposal services until the Permitted Capacity of the Landfill has been fully utilized. The deed and restrictive covenant shall be substantially in the form attached as Attachment 1 (the "Deed and Restrictive Covenant"), and shall promptly be recorded in the Northern Worcester Registry of Deeds. The Town and City acknowledge the expiration of their prior interests in the Additional Land and shall formally release and terminate rights in the Additional Land by executing, acknowledging and recording the release and termination of interests set forth in Attachment 2 (the "Release").

2. Indemnity Regarding Continuation Parcel/Landfill Operations.

RCI agrees to defend, indemnify and hold harmless the Town from and against any and all claims, costs (including reasonable attorneys' fees), demands, payments, damages and/or liabilities arising under the Environmental Laws as a result of the Town holding title to the Continuation Parcel before conveying the Continuation Parcel to RCI. In addition, RCI agrees to defend, indemnify and hold harmless the Town from and against any and all claims, costs (including reasonable attorneys' fees), demands, payments, damages and/or liabilities arising out of or related to RCI's operation of the Landfill and its ownership of and operation of a landfill at the Continuation Parcel or the negligence or misconduct of RCI, or RCI's agents or employees with respect to the operation of the Landfill and/or the ownership of the Continuation Parcel, and/or under the Environmental Laws. This indemnification obligation shall not extend to claims, demands, liabilities, actions, causes of actions, costs and expenses arising from the negligence or misconduct of the Town, or the Town's agents or employees

3. Return of Original Landfill to the City.

At the end of the term of this Continuation Agreement, RCI shall return the Original Landfill to the City free and clear of all liens suffered by or on account of RCI during the term of the Continuation Agreement, except for accrued closure liability which is divided between the City and RCI and for which provision is made in Article III, Section 2, Paragraph B. If the Original

Reports of  
Committees

## Finance Committee

Landfill has remaining capacity, it may be returned in condition suitable for continuing solid waste disposal operations and in a state of intermediate closure consistent with such continuing use as required by Article III, Section 2, Paragraph B. RCI shall be entitled to remove all personal property and equipment acquired by it and used at the Original Landfill; provided that RCI shall not remove any equipment required to be left in place to meet the requirements of any state or federal law, regulation or permit. Any property not removed shall become the property of the City.

4. Restoration of Additional Land.

At least ninety (90) days prior to the expiration of the term of this Continuation Agreement, or within ninety (90) days from the termination hereof, RCI shall inform the Town of RCI's proposed use of the Additional Land and the Continuation Parcel. RCI acknowledges that the Town wishes to promote use of the Additional Land and the Continuation Parcel for renewable energy purposes, including, without limitation, for solar energy purposes, and/or for other uses that generate tax revenue for the Town. RCI agrees that it shall meet with the Town at least once prior to deciding the proposed re-use of the Additional Land and the Continuation Parcel and will cooperate with the Town to use the Additional Land and the Continuation Parcel for such purposes to the extent RCI determines such use to be practically and financially feasible. In any event, RCI will restore the Additional Land and the Continuation Parcel to a condition comparable to that of the 40 Acre Parcel as of October 25, 2017. The provisions of this paragraph shall survive the expiration or termination of this Continuation Agreement.

ARTICLE VII  
RULES OF OPERATION

1. Delivery of Waste.

A. By the City. The City shall take steps to assure that all City Acceptable Solid Waste is delivered to the Landfill in trucks capable of mechanically unloading directly into the working face of the Landfill or at such other location as RCI shall direct (as, for example, in the case of trucks delivering recyclable or compostable material). All such waste shall be carried in covered or closed vehicles such that it shall not spill or blow at or onto the Landfill and the surrounding area. Every truck delivering City Acceptable Solid Waste shall be clearly marked to identify the waste as City Acceptable Solid Waste or the driver thereof shall have and shall surrender to RCI some authorization or identification documents reasonably acceptable to RCI. The City shall take all reasonable steps to assure that only Acceptable Solid Waste is delivered by it or on its behalf. The City shall bear the cost of any damage, clean-up costs or legal liability which results from a delivery by it of waste from City departments and authorities which is not Acceptable Solid Waste.

B. By the Town. RCI shall allow the Town to transport to the Landfill for reuse as daily or intermediate cover or other permitted uses, at no cost to the Town, all street sweepings and catch basin collections generated by the Town's Department of Public Works from locations within the Town, subject to reasonable rules imposed by RCI. RCI shall not accept, and the Town shall not deliver, any catch basin collections that are generated from a combined sewer overflow system.

The Town shall bear the cost of any damage, clean-up costs or legal liability which results from the delivery by it of waste from Town departments and authorities which is not Acceptable Solid Waste.

C. By Others. RCI shall take steps to assure that all waste not subject to Paragraph A or Paragraph B of this Section 1 is delivered in appropriate vehicles and is covered or contained in such manner that it will not spill or blow onto City or Town streets, roads or other property until properly unloaded at the Landfill or any recycling facility. RCI shall take all necessary steps to assure that no waste which is not Acceptable Solid Waste is delivered to the Landfill. RCI shall bear all costs incurred from a failure to comply with this paragraph without recourse to the City or Town.

2. Scales and Weight Records.

RCI shall operate and maintain motor truck scales of an accuracy consistent with state law to weigh all vehicles delivering Acceptable Solid Waste to the Landfill. The City shall provide one or more scale masters, each of whom shall be bonded as to the faithful performance of the duties herein stated, to oversee the operations of such scales at all times when RCI is receiving Acceptable Solid Waste under the terms of this Continuation Agreement. Each incoming truck and the container provided for collection of Town Acceptable Solid Waste shall be weighed and gross weight, tare weight, time, truck identification, type of waste, hauler, source (which shall distinguish between from within the City and the Town and identify, to the extent such information is reasonably available to RCI, the generators thereof) and disposition of waste (recycling, composting or landfilling and location, by cell, within the Landfill) shall be noted on a weight record. Such records shall be the basis for the monthly and annual reports required by this Continuation Agreement. RCI shall maintain records of Town Acceptable Solid Waste delivered by Town inhabitants estimating the quantities of waste delivered by cars and trucks and not weighed. RCI shall likewise establish weight records for all recycled material sold or otherwise transported off of the Landfill for reuse if weight is the basis for such sale or other disposition and in all other cases if it is reasonably practical to do so.

3. Environmental Impact.

A. Hours of Operation. RCI shall establish open hours after consultation with the City Health Director and the Town Board of Health but RCI shall not accept deliveries at the Landfill or at any recycling or composting facility prior to six in the morning or after six in the evening Mondays through Saturdays or at any time on Sundays unless requested by the Town or unless the City Health Director shall consent thereto in writing for specific cases involving weather or other emergencies.

B. Odors. RCI shall operate the Landfill, all related facilities many recycling and composting facilities in such a manner as to minimize odors and as required by applicable laws, regulations, orders and permits. RCI shall take reasonable steps, consistent with state-of-the-art practice in the waste handling industry, to avoid any offensive odors from the Landfill or any recycling or composting facilities being detectable at off-site locations. RCI shall not permit or maintain conditions which cause odors from the Landfill or any recycling or composting facilities to constitute a common law nuisance.

Reports of  
Committees

## Finance Committee

C. Noise. RCI shall operate the Landfill and all related facilities and any recycling and composting facilities in such a manner as to minimize noise detectable off-site and as required by applicable laws, regulations, orders and permits. All internal combustion engines whether powering moveable or permanently placed equipment shall be equipped with operating exhaust mufflers at least equal to the original equipment mufflers supplied with such equipment. Any blasting or other use of explosives shall be conducted only under appropriate permits relating thereto and after notification of the City Health Director and the Town Board of Health. RCI shall not permit or maintain conditions which cause noise from Landfill or any recycling or composting facilities operations to constitute a common law nuisance.

D. Vectors. RCI shall operate the Landfill, all related facilities and any recycling and composting facilities in such a manner as lawfully to minimize the presence of rodents, noxious insects and other vectors and as required by applicable laws, regulations, orders and permits. With respect to enclosed spaces, such operations shall include active measures to exclude or exterminate the same. With respect to exterior spaces, including the areas where waste has been or is being landfilled, such operations shall include the use of daily cover over all waste, intermediate cover on areas temporarily unused and prompt final cover and capping in accordance with the operating plans for the Landfill as approved by the appropriate state body.

4. Compliance with Law and Permits.

RCI shall operate the Landfill, all related facilities and any recycling and composting facilities in compliance with all applicable state and federal laws; regulations and permit requirements and all requirements of the site assignment for the Additional Land issued by the Westminster Board of Health, dated February 26, 2002, and for the Continuation Parcel to be issued by the Westminster Board of Health.

5. Inspections.

RCI expressly agrees that the City Health Director or his designee and the Town Board of Health or its designee shall have the right of access to and entry upon the Landfill and any recycling and composting facilities to inspect without the necessity of advance notice. Other City and Town officials may make reasonable visits to the Landfill and any recycling and composting facilities during hours, when such facilities are open to receive waste and materials, after notifying RCI and making an appointment to do so. All visits or inspections shall be conducted in such a manner as does not interfere with RCI's operations and in compliance with all reasonable safety rules adopted by RCI. This paragraph shall not be in derogation of the right of any public official to carry out any public duty in accordance with any applicable law, including City and Town health officials acting under Chapter 111 of the Massachusetts General Laws, or otherwise. RCI expressly agrees that the Town shall have the right, at its sole cost and expense, to use a Town employee acting under the direction of the Town's Board of Health, monitor the scalehouse at the Landfill.

6. Material, Labor, Equipment and supplies.

RCI shall, at its sole expense, provide or make provision for all material, labor, equipment and supplies which are necessary for RCI to carry out its obligations to the City and Town hereunder.

7. Location of Waste.

In the event that RCI receives information from a credible source that hazardous waste or substances or other materials that may not lawfully be disposed of in the Landfill have been delivered to the Landfill, RCI shall use all reasonable efforts to (a) locate and remove such waste from the Landfill and dispose of such waste in a lawful manner and (b) identify the generator of such waste and to recover all costs, expenses and damages that may be incurred by RCI or the City as a result of the delivery of such waste.

## ARTICLE VIII

## CHANGE IN LAW; UNFORESEEN CIRCUMSTANCES

1. Change in Law; Unforeseen Circumstances.

A. This Continuation Agreement is entered into on the basis of law, regulations, permit terms, conditions, facts and expectations as of the Effective Date. If there shall be adopted any new state, federal or local constitution, law, regulation, rule, ordinance, standard or permit condition applicable to the Landfill or to any operation or program contemplated by this Continuation Agreement, or if there shall be any change, amendment, expansion or change of interpretation or application of the same, which are beyond the reasonable control of RCI and not the result of the willful or negligent action or lack of reasonable diligence of RCI (hereafter a "Change in Law"), which shall materially and adversely affect the cost to RCI of design, engineering, or operation of the Landfill or any operation or program required by this Continuation Agreement, then RCI shall be entitled to adjust the fees, charges and other compensation hereunder proportionately to offset such increased cost.

B. If there shall occur any other Unforeseen Circumstances, as defined below, which are beyond the reasonable control of a party to this Continuation Agreement and are not caused by the intentional or negligent act or lack of reasonable diligence of such party and which adversely affect the performance by such party of its obligations hereunder then such party shall be excused from performance hereunder for the time necessary to alleviate such Unforeseen Circumstance and if, RCI is the affected party, it shall be similarly entitled to adjust the fees, charges and other compensation hereunder proportionately to offset such adverse effect. For purposes hereof, Unforeseen Circumstances shall mean an act of God (except for weather conditions normal for the geographic area), earthquake, flood, fire or similar casualty, an act of a public enemy, war blockade, insurrection, riot, general arrest or restraint of government or people, civil disturbance or any similar occurrence.

C. In no event shall any increase under Paragraphs A and B above to the fees, charges and other compensation payable to RCI by the City hereunder exceed on a per ton basis an amount equal to fifty percent (50%) of the average per ton adjustment charged by RCI on account of such Change in Law or Unforeseen Circumstance to all other persons and entities (other than the Town) delivering waste to RCI for the similar affected service.



Reports of  
Committees

## Finance Committee

2. Implementation.

RCI shall promptly give notice to the Town Board of Health and the City Health Director of any Change in Law or Unforeseen Circumstance that may be responsible for any change, RCI's estimate of the impact thereof, RCI's proposal to accommodate the same, insurance proceeds, if any, available to cover such costs, and RCI's proposal for an adjustment to fees, charges and other compensation as permitted by Section 1 above. Said notice shall be specific as to the costs which would have been incurred by RCI been in the absence of such event or circumstance and the reasons, and extent of the cost adjustment required. RCI shall take all reasonable steps necessary or appropriate to mitigate the cost adjustment that may be required. RCI shall in good faith negotiate with the Town Board of Health and City Health Director concerning such proposal. If neither the Town Board of Health nor the City Health Director objects in writing, stating the reasons for such objection, to any proposal made under this Section within twenty-one (21) days, RCI shall be entitled to implement the proposal. If an objection is made, RCI may, at its option, submit a revised proposal and thereby restart the review period.

3. Actions by RCI.

RCI may at any time take steps to accommodate, permanently or on a temporary basis, any event which is the subject of Section 1 of this Article, before or after submitting a proposal and before or after obtaining an adjustment by agreement or by arbitration. It is acknowledged by the Parties that RCI may need to act quickly to avoid non-compliance with applicable law or to remedy the consequences of Unforeseen Circumstances. Such steps shall not compromise RCI's ability to act under Section 2 of this Article nor shall such steps create any presumption of appropriateness for purposes of the Continuation Agreement or any arbitration decision. If RCI takes steps prior to the conclusion of the process outlined in Section 2 of this Article, it shall do so at its own risk that the Parties will agree to an adjustment or that an arbitration shall be resolved favorably to RCI. On the other hand, if the Town or the City do object, and an arbitration is thereafter resolved favorably to RCI, the costs incurred by RCI in connection with taking such steps shall be reimbursed retroactively in accordance with such agreement or resolution.

4. Termination.

If an event described in Section 1 of this Article has occurred and if RCI shall determine in the exercise of good faith and as a matter of sound business judgment that, as a result of such event described in Section 1 of this Article, it cannot operate the Landfill without incurring net losses, RCI may terminate this Continuation Agreement without liability of any party to the other by giving six (6) months written notice to Town Board of Health and the City Health Director of its intention to do so. Such notice shall be deemed given only if it is accompanied by a full explanation of the event, its consequences to the Landfill operations and the reasons why RCI has determined that termination is necessary. If RCI has given notice as required by Section 2 of this Article, the City may, prior to the time when RCI is entitled to implement its proposal pursuant to said Section 2, terminate this Continuation Agreement without liability of any party to the other by giving six (6) months written notice to RCI of its intention to do so if, and only if, the result of implementation of the RCI proposal will be to cause the City to pay a per ton disposal fee which is in excess of the lesser of (i) fifty (50%) percent of the least costly disposal

alternative then available to the City and (ii) \$60 per ton (as adjusted from the Effective Date by the Consumer Price Index in the same manner as the Base Fee under Article IV, Section 1, except from the Effective Date). At the request of either party, the other party will negotiate in good faith to attempt to find a mutually acceptable basis for continuing this Continuation Agreement or for other disposal options for City Acceptable Solid Waste. If RCI shall exercise its option under this Section, RCI shall not thereafter for a period of two years conduct any business similar to the businesses conducted at the Landfill prior to such termination at any location within fifteen (15) miles of the Landfill. In addition, RCI shall make all reasonable efforts to accommodate the disposal of Acceptable Solid Waste delivered by or on behalf of the City at other disposal facilities operated by RCI at a cost to the City which is not in excess of the cost to the City of utilizing the Landfill and this obligation of RCI to the City shall continue at the option of the City for any period up to the termination date of this Continuation Agreement as stated in Article X. If the total legally permitted capacity of the Landfill has been utilized and no application which has not been denied by the appropriate government agency for additional capacity, expansion or extension is pending, either RCI or the City may by notice to the other terminate this Continuation Agreement as of the date of such notice without liability of either party to the other party or any other party hereto and without any other responsibility or duty hereunder.

#### ARTICLE IX INSURANCE

##### 1. Types and Amounts.

RCI shall obtain and cause to be maintained during the term of this Continuation Agreement, at RCI's expense, such insurance as is customary and prudent in the waste disposal and handling industry, including insurance covering worker's compensation, public liability, personal injury and property damage and shall be reasonably satisfactory to the City based upon prevailing industry standards. All insurance shall be carried with responsible insurance companies of recognized standing which are well rated by national rating organizations.

##### 2. Policies.

All insurance shall be on usual commercial terms and written by insurers of recognized financial standing. Insurance may be carried on a blanket basis with insurance covering other RCI activities and facilities and may provide for commercially reasonable deductibles and exclusions. RCI shall deliver to the City certificates of all policies for insurance and any policy amendments and policy renewals. Each policy shall provide that the policy, coverage thereunder and deductibles shall not be amended, modified, cancelled or terminated without thirty (30) days prior written notice to the City. RCI shall promptly give the City copies of all notices and claims of loss and any documentation or correspondence related to such losses.

##### 3. City and Town as Additional Insureds.

All policies except insurance for worker's compensation shall include the City, as owner of the fee title to the Landfill, and Town, as its interests may appear, as additional insureds except that

Reports of  
Committees

## Finance Committee

all obligations of the insured, including the obligation to pay premiums, shall be the sole obligations of RCI.

ARTICLE X  
TERM1. Term and Notice of Termination.

This Continuation Agreement shall continue for a period of time that is equal to that required to exhaust Permitted Capacity at the Landfill together with the time necessary to fulfill any closure and post-closure obligations associated with the Landfill as set forth in this Agreement (the "Term"). Within three hundred and sixty five (365) days of the estimated exhaustion of Permitted Capacity, RCI shall provide written notification to the City and Town and during the final year of this Continuation Agreement the City and Town shall be entitled to reduce the per day tonnage back to not less than 500 tons per day under the terms and conditions of the Continuation Agreement.

2. Extension.

At any time during the final year of this Continuation Agreement either the City and Town, on the one hand, or RCI on the other hand, may request that the other enter into negotiations concerning an extension hereof to create additional Landfill capacity beyond that associated with Permitted Capacity, with or without amendments. Such other party shall meet with the requesting party and shall negotiate in good faith concerning terms and conditions for any extension or shall state reasonable business reasons why it is not willing to do so. Neither party shall be required to continue this Continuation Agreement beyond its stated term.

ARTICLE XI  
DEFAULT AND REMEDIES1. Remedies.

In the event that any party hereto shall not perform its obligations hereunder, the other parties may exercise any and all rights and remedies available to them at law or in equity, including the remedy of specific performance, provided that this Continuation Agreement shall not be terminated except as provided herein.

2. Events of Default.

A. Termination Rights. If an Event of Default, as described in this Section 2 has occurred with respect to a party, and such Event of Default shall be continuing, the City or RCI shall have the right but not the obligation to terminate this Continuation Agreement by giving to the other written notice of its intention to terminate, and thereupon this Continuation Agreement shall terminate and be of no further effect. All rights of the parties accrued prior to the date of such termination shall continue, but no additional obligations shall accrue on either account.

Reports of  
Committees

Finance Committee

B. Events of Default by RCI Giving Rise to Termination Rights. Each of the following shall constitute an Event of Default by RCI giving rise to a right of termination as provided in Paragraph A of this Section 2:

(1) the failure of RCI to perform or observe any material representation, covenant or provision under this Continuation Agreement, including providing for disposal of City Acceptable Solid Waste or Town Acceptable Solid Waste in accordance with this Continuation Agreement; provided, that RCI shall have been given notice by the City or Town of such failure and RCI shall not have promptly undertaken and continued with due diligence all actions necessary and appropriate to correct such failure and shall have not corrected such failure within ninety (90) days of the notice;

(2) the commencement by RCI or the Guarantor of any voluntary proceeding in bankruptcy under federal law or any act by RCI seeking similar relief from its debts or protection from its creditors under state law or if RCI or the Guarantor is unable to pay its debts as they mature or admits in writing such inability to do so; or

(3) the filing of an involuntary petition against RCI or the Guarantor (or any other form of action for relief) under federal bankruptcy law, and such petition or action is not dismissed in thirty (30) days.

During the pendency of the cure period under Paragraph B(1) above, RCI shall provide to the City upon demand, such documentation and reports as may be requested by the City to demonstrate that RCI is undertaking with due diligence all actions necessary to cure RCI's breach. The failure to provide such information shall constitute an Event of Default giving rise to a right of termination by the City under Paragraph A of this Section 2.

C. Defaults by the City Giving Rise to Termination Rights. Each of the following shall constitute a default by the City giving rise to a right of termination in RCI as provided in Paragraph A of this Section 2:

(1) the failure of the City to perform or observe any material representation, covenant or provision under this Continuation Agreement, including to make payment when due of the fee provided in Article IV, Section 1; provided, that the City shall have been given written notice by RCI of such failure and the City shall have not promptly undertaken and continued with due diligence all actions necessary and appropriate to correct such failure and shall have not corrected such failure within ninety (90) days of the notice;

(2) the commencement by the City of a proceeding under federal bankruptcy laws or any state law of similar import seeking relief from its debts or protection from its creditors; or

(3) the creation, by state statute or otherwise, of a receiver for the property of the City or moratorium or suspension of payment of its liabilities, or the appointment of a financial control board or other agency with the power to disavow contracts or debts of the City.

Reports of  
Committees

## Finance Committee

D. Default of the Town Giving Rise to Termination Rights. The failure of the Town to perform or observe any material representation, covenant or provision under this Continuation Agreement that materially and adversely affects RCI's rights hereunder shall give rise to a right of termination in RCI as provided in Paragraph A of this Section 2; provided, that the Town shall have been given written notice by RCI of such failure and the Town shall have not promptly undertaken and continued with due diligence all efforts necessary and appropriate to correct such failure and shall have not corrected such failure within ninety (90) days of the notice.

3. Liens and Encumbrances.

RCI waives and releases any and all rights to assert any lien against the Original Landfill. RCI shall, at its expense, (i) discharge any liens of any sort that attach to the Original Landfill arising out of the activities of RCI or its subcontractors; (ii) discharge of record, by bond or otherwise, any lien or encumbrance that may be filed against the Original Landfill by any subcontractor; and (iii) indemnify and hold harmless the City for any injury or expense including reasonable attorney's fees, incurred by the City due to the filing of any such lien or RCI's failure to have such lien discharged.

4. Specific Performance.

The City and Town shall each have the right to seek specific performance by RCI of its payment obligations or failure to meet its waste acceptance obligations under this Continuation Agreement (the "Primary Obligations"). The City and Town shall provide at least thirty (30) days written notice to RCI and an opportunity to cure before commencing such an action or proceeding for specific performance and to seek monetary damages. RCI shall reimburse the Town and/or the City, as the case may be, for any and all costs incurred by the Town and/or the City to dispose of waste at a facility other than the Landfill, and any other costs, including, without limitation, reasonable attorneys' fees and costs incurred by the City or Town to enforce RCI's Primary Obligations under this Continuation Agreement provided that a final judgment has been made finding that RCI has breached such obligations under the Continuation Agreement or RCI acknowledges the same, in which case the City and/or the Town, as the case may be, shall be reimbursed by RCI within thirty (30) days from written demand with invoices therefor. If, in connection with any action or proceeding instituted to enforce this Continuation Agreement, a final judgment is issued which does not find RCI in breach of such obligations under the Continuation Agreement and finds the City and/or the Town's claims frivolous, the reasonable attorneys' fees and costs incurred by RCI in defending such action or proceeding may be offset by RCI against any future payments due under this Continuation Agreement to the Party on whose behalf the action or proceeding was prosecuted.

ARTICLE XII  
MISCELLANEOUS1. Guarantor.

RCI shall cause to be maintained in full force and effect through the term of this Continuation Agreement and until RCI shall have fully complied with its obligations hereunder the guarantee of the performance of RCI hereunder by the Guarantor in the form attached hereto as Attachment 3 (the "Guaranty"), which Guaranty is incorporated herein.

2. Leachate Agreement Extension.

The term of the Leachate Agreement, dated December 1, 2012, as amended September 25, 2105, attached hereto as Attachment 4 (the "Leachate Agreement"), is hereby amended and extended so that the term of the Leachate Agreement shall coincide with the Term of this Agreement.

3. Governing Law.

This Continuation Agreement shall be governed by the laws of the Commonwealth of Massachusetts and the courts of Massachusetts and the federal courts sitting in Massachusetts shall be the exclusive venue for bringing and trying any suit at law or in equity arising out of this Continuation Agreement.

4. Real Estate Taxes.

The Town shall assess, and RCI shall pay as required by law, real estate taxes due on the raw unimproved land value for the portion of the Existing Landfill and Continuation Parcel owned by RCI.

5. Severability.

If any part of this Continuation Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Continuation Agreement shall remain in full force and effect unless said court shall determine that such invalidity or unenforceability is of such a material nature that the parties hereto would not have entered into this Continuation Agreement had such invalidity or unenforceability been known to them.

6. Assignability; etc.

This Continuation Agreement shall not be assignable by any party without the prior written consent of the others, except that RCI may assign this Continuation Agreement, grant a security interest in equipment and facilities utilized in providing services hereunder, and may mortgage the Additional Land, to a financial institution as security for borrowed money borrowed by RCI for the purposes of financing the construction and operation solid waste facilities required under this Continuation Agreement and for no other purpose. RCI may be sold or merged into a related company if, and only if, such company assumes in writing all of the obligations of this Continuation Agreement and the City and the Town, after reviewing all information it deems necessary or appropriate concerning the successor company, consent to such merger, which

Reports of  
Committees

## Finance Committee

consent shall not be unreasonably withheld. RCI shall not be sold or merged into any other company, not a related company, or allow the transfer of majority control or ownership of RCI without the prior written consent of the City and the Town, which consent shall not be unreasonably withheld but may take into account (i) the experience of any successor entity or owner in landfilling, recycling, composting, environmental engineering and other services to be provided by RCI and the Guarantor, (ii) the financial strength and capabilities of the successor entity or owner in relation to RCI's obligations and liabilities, (iii) the reputation and character of the successor entity or owner and any affiliates or associates thereof including any enforcement or criminal action or history and (iv) the continuing enforceability of the Guaranty given by the Guarantor. If RCI is not the surviving entity, and the City and the Town consent to such merger or change in control, then such surviving entity shall protect the City's and the Town's rights hereunder or referred to herein through written acceptance of this Continuation Agreement, attornment or other agreements, or any combination thereof in form and substance satisfactory to the City and the Town.

7. Notices.

Notices, approvals and other acts required to be in writing hereunder shall be given in writing and shall be deemed given only when actually delivered to the other party at the address stated below. Actual delivery may be conclusively evidenced by a return receipt provided by the U.S. Postal Service. Delivery to RCI shall be made at its principal business office, to the attention of President; with a copy to Regional Counsel. Delivery to the City shall be made at its City Hall, Main Street, Fitchburg, Massachusetts 01420 to the attention of the City Health Director; with a copy to the Mayor and the City Solicitor. Delivery to the Town shall be made at its Town Hall, Westminster, Massachusetts, attention: Board of Selectmen; with a copy to the Board of Health.

8. Town Not Owner or Operator.

The parties agree that the Town shall not be deemed to be an "owner" or "operator" of the Landfill under applicable federal or state laws and regulations and to the extent that any right or provision of this Continuation Agreement may be construed to conflict with that status, said right or provision shall not be operative and shall yield to the preservation of the Town's non-owner and non-operator.

9. Counterparts.

This Continuation Agreement may be executed in multiple counterparts each of which shall be a separate original and all of which shall constitute one and the same agreement.

10. Amendment or Waiver.

Neither this Continuation Agreement nor any provision hereof may be changed, modified, amended or waived except by a written instrument signed by the party against whom enforcement of such change, modification, amendment or waiver is sought. Notwithstanding the foregoing: (a) the Town acknowledges and agrees that the City and RCI may, without the Town's consent, change, modify, amend or waive any provision of this Continuation Agreement so long as the change, amendment or waiver does not affect the Town's rights hereunder, and (b) the City acknowledges and agrees that the Town and RCI may, without the City's consent,

Reports of  
Committees

Finance Committee

change, modify, amend, or waive any provision of this Continuation Agreement so long as the change, amendment or waiver does not affect the City's rights hereunder.

11. City and Town Approval or Consents.

Whenever it is permitted or required by this Continuation Agreement that an approval or consent shall be given by the City, RCI shall make written request for such approval or consent to the City Health Director, or the successor officer thereto, and may rely upon the written response given by the City Health Director for all purposes under this Continuation Agreement. Whenever it is permitted or required by this Continuation Agreement that an approval or consent shall be given by the Town, RCI shall make written request for such approval or consent to the Westminster Board of Selectmen, and may rely upon the written response given by the Board of Selectmen for all purposes under this Continuation Agreement.



Reports of  
Committees

Finance Committee

IN WITNESS WHEREOF, the parties have caused this Continuation Agreement to be executed in their names by their duly authorized officers and have caused their respective corporate seals to be hereunto affixed and attested, all as of the New Effective Date.

Attest:

CITY OF FITCHBURG

[Seal]

By: \_\_\_\_\_

Clerk

By: \_\_\_\_\_

Mayor

Approved as to form:

Approved as to appropriation

By: \_\_\_\_\_

City Solicitor

By: \_\_\_\_\_

Auditor

Attest:

RESOURCE CONTROL, INC.

[Seal]

By: \_\_\_\_\_

Secretary

By: \_\_\_\_\_

President

Attest:

TOWN OF WESTMINSTER  
BOARD OF SELECTMAN

[Seal]

By: \_\_\_\_\_

Clerk

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Attest:

TOWN OF WESTMINSTER  
BOARD OF HEALTH

[Seal]

By: \_\_\_\_\_

Clerk

By: \_\_\_\_\_

Approved as to form by  
Legal Counsel for the Town

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Reports of  
Committees

Finance Committee

Schedule A

The monthly fee will be comprised of (1) 1/12<sup>th</sup> of the fixed fee cost shown on the attached (i.e., \$13,788.72) plus (2) the variable cost based on the actual Town quantities of material or terms delivered in the month multiplied by the unit prices shown in the column "Rates" on the attached.

Reports of  
Committees  
  
Finance Committee

DRAFT LAST REVISED: 7/24/17  
FOR REVIEW AND COMMENT

Town of Westminster  
Residential Drop Off Area  
Estimated Operating Costs  
\_\_\_\_\_, 2018  
Schedule A

Town Westminster	100
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Table of Estimated Quantities

Scrap Metal	568.62	568.62	-
CFC	1671	1671.00	-
Auto Batts	1449	1449.00	-
Tires	91.63	91.63	-
CRT	93.71	93.71	-
Fluor bulbs	8794	8794.00	-
Propane Tanks	1097	1097.00	-
Antifreeze (estimated)	500	500.00	-
Mattresses	5.27	5.27	-
Paint	5	5.00	-
Waste Oil	5650	5650.00	-

Table of Estimated Operating Costs

Newspaper/mixed paper	Ton	\$0.00	183.11	\$0.00	\$10,007.17
News Haul	EA	\$235.00	42.58	\$10,007.17	
Cardboard	Ton	\$0.00	138.32	\$0.00	\$28,021.72
Cardboard Haul	EA	\$235.00	119.24	\$28,021.72	
Comingled	Ton	\$35.00	77.73	\$2,720.55	\$24,861.82
Comingled Haul	EA	\$470.00	47.11	\$22,141.27	
Scrap Metal	Ton	\$0.00	568.62	\$0.00	\$0.00
CFC	EA	\$18.00	1,671.00	\$30,078.00	\$30,078.00
Auto Batteries	EA	\$0.00	1,449.00	\$0.00	\$0.00
Tires	Ton	\$110.00	91.63	\$10,079.30	\$15,271.67
Tire Haul	EA	\$170.00	30.54	\$5,192.37	
CRT	Ton	\$340.00	93.71	\$31,861.40	\$31,861.40
Fluor bulbs	LF	\$0.13	8,794.00	\$1,143.22	\$1,143.22
Propane Tanks	EA	\$2.00	1,097.00	\$2,194.00	\$2,194.00
Antifreeze (estimated)	Gal	\$0.50	500.00	\$250.00	\$250.00
Mattresses	Ton	\$100.00	5.00	\$500.00	\$500.00
Paint	Cubic Yard	\$375.00	5.00	\$1,875.00	\$1,875.00
Waste Oil	Gallon	\$0.25	5,650.00	\$1,412.50	\$1,412.50
				Sub-Total Variable Cost	\$147,476.51
Fixed Cost Summary Breakdown refer to "notes 3 thru 9"				Sub-Total Fixed Cost	\$165,440.60
				Total Variable/Fixed	\$312,917.11
				Contingency (25%) =	\$78,229.28
				Total Costs, rounded =	\$391,000
Notes:					
1. Unless shown separately, all material costs include transportation.					
2. Turning the compost pile is assumed to require 2 hrs/wk for 39 wks/yr. The cost does include equipment capital costs.					
3. Plow/sanding is assumed to require 15 events/yr. The cost does not include equipment capital costs.					
4. Third Party Engineer Inspection as required by MA DEP Regulation					
5. Permit Oversight - Waste Management Compliance Inspections, Hauling Logistics & Oversight, Engineering, Permit Condition Review, CYCLE					
6. Direct Labor - Per hour cost - \$15 per hour * 2 employees *30% benefits/taxes, etc.					
7. Hours of Operation Saturday 7:30 am -1:00 pm, Sunday 9 am - 12 pm, Monday 730 am-3 pm, Friday 730 am-3 pm					
8. Landscaping - Cost assumption is bi-weekly service May 1st through November 30th					
9. Container rental assumes 4 containers recycling and 4 containers MSW @ \$150 per month					

Reports of  
Committees  
  
Finance Committee

Schedule B

Plan of Land showing Drop Off Center Land

Reports of  
Committees

Finance Committee

Between Fitchburg Road and the Leominster  
Town Line

**ATTACHMENT 1**

**Deed with Restrictive Covenant**

The Town of Westminster (the "Town"), a political subdivision of the Commonwealth of Massachusetts, acting pursuant to its Board of Selectmen pursuant to Chapter \_\_\_\_ of the Acts of 2018 and the vote taken under Article \_\_\_\_ of the November \_\_\_\_, 2017 Special Town Meeting, a certified copy of which is attached hereto and incorporated herein, with an address at 11 South Street, Westminster, Massachusetts 01473, in consideration of One Hundred Dollars (\$100.00), the receipt and legal sufficiency of which is hereby acknowledged, hereby **GRANTS** to Resource Control Inc. ("RCI"), a Massachusetts corporation with a principal place of business at 26 Patriot Place, Suite 300, Foxboro, Massachusetts 02035, with \_\_\_\_ [depends on the kind of title that the state will convey to the Town], the parcel of land located in Westminster, Massachusetts, and described more particularly in **Exhibit A** attached hereto (the "Landfill Continuation Parcel").

The Landfill Continuation Parcel is conveyed to RCI on the condition that the Landfill Continuation Parcel shall be used solely for solid waste management and disposal services and activities ancillary thereto for a term of at least fifty (50) years from the recording hereof, and RCI covenants and agrees that it shall use the Landfill Continuation Parcel for such purposes (the "Restrictive Covenant"), except that this Restrictive Covenant shall be released as to any portion or portions of the Landfill Continuation Parcel that have been capped or closed in accordance with applicable laws, rules, and regulations, as determined by the Massachusetts Department of Environmental Protection, as evidenced by the recording of an affidavit to that effect showing the capped or closed area to be released, which affidavit is accepted and countersigned by the Westminster Board of Health. The parties agree that the restrictions herein shall run with and bind the Landfill Continuation Parcel for the full term stated herein, unless released as provided hereunder. The restrictions constitute "another restriction held by a governmental body" under G.L. c. 184, §26 and not subject to the provisions of G.L. c. 184, §§ 27-30, including, without bringing forward requirements stated therein.

Being the same premises described in the deed from the Commonwealth of Massachusetts to the Town, recorded at Worcester North District Registry of Deeds, Book \_\_\_\_, Page \_\_\_\_ herewith.

Witness our hands and seals this \_\_\_\_ day of \_\_\_\_, 2018.

[signatures on following pages]

Executed as a sealed instrument on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

TOWN OF WESTMINSTER

BOARD OF SELECTMEN

By: \_\_\_\_\_  
Heather M. Billings, Chair

By: \_\_\_\_\_  
James A. DeLisle, Vice Chair

By: \_\_\_\_\_  
Wayne R. Walker, Clerk

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, then personally appeared before me, the above-named \_\_\_\_\_, member of the Town of Westminster Board of Selectmen, as aforesaid, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, and acknowledged to me that he/she/they signed the foregoing instrument voluntarily for its stated purpose on behalf of the Town of Westminster.

\_\_\_\_\_  
Notary Public:  
My commission expires:

Reports of  
Committees

Finance Committee

Exhibit A

[Legal description Continuation Parcel]

City of Fitchburg,

January 16, 2018

Reports of  
Committees

Finance Committee

**ATTACHMENT 2**

**Confirmatory Release**

This **RELEASE** is entered into as of \_\_\_\_, \_\_, [2018], by the City of Fitchburg (the "City"), a political subdivision of the Commonwealth of Massachusetts (the "Release").

In consideration of Ten Dollars (\$10) paid, receipt of which is hereby acknowledged, the City hereby acknowledge that its rights and interests as set forth in the instruments recorded in the Northern Worcester County Registry of Deeds at Book 2173, Page 235, and at Book 2173, Page 244, have expired by their own terms. To clarify title, the City hereby executes this confirmatory document to confirm the release, termination, and extinguishment of said rights and interests.

Executed as a sealed instrument.

Attest:

CITY OF FITCHBURG

[Seal]

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Mayor

Approved as to form:

Approved as to appropriation

By: \_\_\_\_\_  
City Solicitor

By: \_\_\_\_\_  
Auditor

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

Date:

Then personally appeared before me, the above-named \_\_\_\_\_, the \_\_\_\_\_ for the City of Fitchburg, who executed the foregoing Release on behalf of the City of Fitchburg and acknowledge the foregoing to be his/her free act and deed and the free act and deed of the City of Fitchburg.

\_\_\_\_\_  
Notary Public:  
My commission expires:



Reports of  
Committees

Finance Committee

**ATTACHMENT 3**

**Guaranty**

This Guaranty (this "**Guaranty**") dated as of this \_\_\_\_\_ day of \_\_\_\_\_, [2018], is made and entered into by Waste Management of Massachusetts, Inc., a Massachusetts corporation ("**Guarantor**").

**WITNESSETH**

WHEREAS, Resource Control, Inc., a subsidiary of Guarantor (the "**WM Subsidiary**") has entered into a Second Amended and Restated Solid Waste Disposal Services Agreement (as the same may be amended from time to time by WM Subsidiary and the Municipalities, the "**Continuation Agreement**") effective as of the date hereof with the Town of Westminster, Massachusetts and the City of Fitchburg, Massachusetts (individually a "**Municipality**" and collectively the "**Municipalities**"); and

WHEREAS, Guarantor will directly or indirectly benefit from the Continuation Agreement;

NOW THEREFORE, in consideration of the Municipalities entering into the Continuation Agreement, Guarantor hereby covenants and agrees as follows:

1. **GUARANTY.** Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guaranties the timely payment when due of any and all financial obligations of WM Subsidiary (the "**Obligations**") to Municipalities under and in accordance with the Continuation Agreement. To the extent that WM Subsidiary shall fail to pay any Obligations within any cure period set forth in Article VII(4) of the Continuation Agreement, Guarantor shall pay the Municipalities the amount due within twenty (20) business days thereafter. This Guaranty shall constitute a Guaranty of payment and not of collection. The liability of Guarantor under the Guaranty shall be subject to the following:

Guarantor's liability hereunder shall be and is specifically limited to any and all payments required to be made under the Continuation Agreement (even if such payments are deemed to be damages) and, except to the extent specifically provided in the Continuation Agreement, in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort or any other damages, costs or attorney's fees. Nothing herein shall release WM Subsidiary from paying such amounts if due under the Continuation Agreement.

2. **DEMANDS AND NOTICE.** If WM Subsidiary fails or refuses to pay any Obligations when due, the Municipality shall notify WM Subsidiary in writing of the manner in which WM Subsidiary has failed to pay and demand that payment be made by WM Subsidiary. If WM Subsidiary's failure or refusal to pay continues for a period of fifteen (15) days after the date of such notice to WM Subsidiary and Municipality has elected to exercise its rights under this Guaranty, Municipality shall make a demand upon Guarantor (hereinafter referred to as a "**Payment Demand**"). A Payment Demand shall be in writing and shall reasonably and briefly specify what payment is due to the

Municipality and, if known, the amount WM Subsidiary has failed to pay, with a specific statement that Municipality is calling upon Guarantor to pay under this Guaranty. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until WM Subsidiary or Guarantor has fully cured such default and additional written demands concerning such default shall not be required until such default is cured.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- a. it is a corporation duly organized and validly existing under the laws of the Commonwealth of Massachusetts and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- b. no authorization, approval, consent or order of, or registration or filing with any court of other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- c. this Guaranty constitutes a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. SETOFFS AND COUNTERCLAIMS. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which WM Subsidiary has or may be entitled to arising from or out of the Continuation Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of WM Subsidiary.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by the parties hereto.

6. WAIVERS. Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against WM Subsidiary or any other person, or except as expressly hereinabove set forth, to require that Municipality seek enforcement of any performance against WM Subsidiary or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of Municipalities in the exercise of or failure to exercise any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of the Obligations, or any part thereof

Reports of  
Committees

## Finance Committee

7. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by recognized overnight courier, or by telecopier as follows:

To Municipalities: Board of Selectmen  
11 South Street  
Westminster, MA 01473  
Facsimile:

Mayor Stephen L. DiNatale  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420  
Facsimile:

To Guarantor: Waste Management of Massachusetts, Inc.  
4 Liberty Lane W.  
Hampton, NH 03842  
Gail M. Lynch, Esq., New England Senior Group Counsel  
Facsimile:

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telecopier shall be effective upon actual receipt if received during the recipient's normal business hours or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices by telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. **EFFECTIVE DATE; TERM.** This Guaranty shall be effective as of the date hereof, and this Guaranty and the Guarantor Obligations shall be continuing and irrevocable until all of the WM Subsidiary's Obligations under the Continuation Agreement have been satisfied in full.
9. **MISCELLANEOUS.** THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REGARD TO PRINCIPALS OF CONFLICTS OF LAWS. This Guaranty shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable by Municipalities, their successors and assigns. Guarantor may assign this Guaranty and be released from its obligations hereunder with the consent of Municipalities, which consent shall not be unreasonably withheld. This Guaranty embodies the entire agreement and understanding between Guarantor and Municipalities and supersedes all prior agreements and understandings relating to the subject matter hereof, including without limitation that certain guaranty entered into by and between Guarantor and the Municipalities on June 21, 2010. The headings in this Guaranty are for purposes of reference only and shall

*City of Fitchburg,*..... January 16, 2018

Reports of  
Committees  
  
Finance Committee

not affect the meaning hereof. This Guaranty may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument.

EXECUTED as of the day and year first above written.

WASTE MANAGEMENT OF MASSACHUSETTS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Reports of  
Committees

Finance Committee

#### ATTACHMENT 4

#### Leachate Agreement

Leachate Discharge and Sludge Acceptance Agreement  
Between the City of Fitchburg and Resource Control, Inc.  
Dated 6-1-2012

WHEREAS, Resource Control, Inc. (hereinafter referred to as "RCI") is the operator of the Fitchburg-Westminster Sanitary Landfill ("Landfill") under the Amended and Restated Solid Waste Disposal Agreement dated June 21, 2010 by and between the City of Fitchburg ("City"), Town of Westminster ("Town"), and RCI ("Landfill Operating Agreement"); and

WHEREAS, RCI is desirous of disposing of the leachate emanating from the Landfill, Landfill gas condensate and sewage generated at the Landfill, or from onsite buildings including the scale house, office trailers and gas-to-energy plant ("Wastewater"), and the City is desirous of disposing nonhazardous sanitary sludge, grit and screenings generated at the City's Eastern Wastewater Treatment Facility ("Sludge") at the Landfill;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged by RCI and the City (collectively referenced as the "Parties"), the Parties hereby enter into this Leachate Disposal and Sludge Acceptance Agreement ("Agreement") subject to the following terms and conditions:

- I. This Agreement shall replace and fully supersede the July 30, 1986 Paper Sludge Agreement entered into by the Parties.
- II. The City shall continue to maintain the existing pipeline in Route 31, which conveys leachate from the Landfill to the Fitchburg sewer system at the Fitchburg-Westminster town line. RCI shall be responsible for maintaining the on-site pipeline up to the existing manhole in Route 31 that houses an air release valve ("Leachate manhole #30"). The City shall be responsible for maintaining the pipeline from Leachate Manhole #30 northward. In the event this pipeline in Route 31 needs to be upgraded to accept and convey the increased flow from the Landfill, the cost of the upgrade shall be borne by RCI.
- III. RCI shall provide and maintain a flow measuring system to verify and record the actual volume of Wastewater flow entering the City's sewer system and shall prevent solid debris from obstructing flow in the City's pipeline. The City shall have the right to inspect and sample at the flow measuring station at any time.
- IV. RCI shall calibrate the meter at the flow measuring station at the City's request, but in no case less than once annually, and provide the inspection results to the City.
- V. RCI agrees to accept and properly dispose of up to 8,600 tons of Sludge annually for as long as the Landfill is open to commercial operations, provided that the acceptance of Sludge is allowed by applicable Landfill

permits, laws and regulations and that acceptance of Sludge does not result in the creation of any nuisance conditions at the Landfill. If the quantity of Sludge exceeds 8,600 tons in a calendar year, the City shall pay RCI at the City disposal rate in place at that time. The current disposal rate for Sludge as of the date of this Agreement is \$38.16 per ton. Excess tonnage shall be billed on a monthly basis once the 8,600 tons allowance is exceeded. Payments shall be due 30 days from date of invoice. The commercial operating site life of the Landfill is currently expected to extend to 2025. RCI agrees to file any renewals with the MDEP required to accept Sludge within such commercial operating life.

VI. RCI affiliates in New England will provide contingency Sludge disposal until 2025 in the event the Landfill is not open for commercial operations and is unable to accept Sludge. The total disposal and transportation rate for Sludge is currently \$100 per ton and is subject to annual CPI Boston adjustment from the Date of the Agreement first appearing above.

VII. As long as RCI is accepting Sludge under the Agreement at the Landfill, the City shall accept and treat, at its plant, up to 8,803,800 gallons of Wastewater per quarter (67 gpm average) at no charge to RCI. RCI shall pay the City Wastewater Enterprise Fund if flow rates exceed 8,803,800 gallons in a calendar quarter, at the rates in place at the time, currently set at \$7.30 per one hundred cubic feet. Excess flows shall be billed on a quarterly basis to coincide with a calendar quarter. Payments shall be due 30 days from date of invoice. Once the Landfill ceases accepting Sludge, as a result of either a) the Landfill is no longer in operation, or b) can no longer accept Sludge due to restrictions imposed by law, regulation, permit or nuisance created by the acceptance or disposal of the Sludge the City shall accept, at no charge to RCI, Wastewater in an amount up to 50 gpm on average or 2,160,000 gallons per month for as long as RCI is meeting its Landfill closure and post-closure obligations under the Landfill Operating Agreement. Amounts above the 50 gpm average shall be subject to the rates specified above.

VIII. Absent circumstances beyond RCI's control, such as excess Wastewater flow created by extreme weather conditions, at no time shall the peak flow rate from the Landfill exceed 200 gpm (300,000 gallons per day).

IX. RCI shall use best efforts to reduce and eliminate groundwater flows from entering into the leachate collection and conveyance system. Such efforts shall include, but not be limited to: sampling of existing perimeter interceptor trenches around the Landfill's Section 1 and installation of groundwater seepage control trenches in Section 2; and making application to Massachusetts Department of Environmental Protection (DEP) as necessary to eliminate these flows from the leachate collection and conveyance system.

X. If the City undertakes or initiates procedures that significantly reduce the quantity of Sludge delivered to the Landfill, the Agreement may be modified to account for those changes.

XI. Should RCI transfer or assign its contractual obligations to operate the Landfill to any other entity or operator, it is understood that this Agreement shall be made a condition of said transfer or assignment.

Reports of  
Committees

## Finance Committee

- XII. RCI shall maintain and comply with a City Issued Industrial Pretreatment Permit. If discharge limits with the Industrial Pretreatment Permit require pretreatment at the Landfill or other additional costs to RCI, this Agreement may be modified by the Parties. Any modification to this agreement shall be by mutual agreement, signed by both parties.
- XIII. This Agreement may be terminated by either party upon completion by RCI of its Landfill post-closure obligations under the Landfill Operating Agreement.
- XIV. The performance of this Agreement, except for the payment of money for Wastewater already delivered for disposal, may be suspended by either party in the event that performance of this Agreement is prevented by a cause or causes beyond the reasonable control of such parties ("Force Majeure"). Such causes shall include but not be limited to acts of God, acts of war, riot, fire, explosion, accidents, inclement weather or sabotage, changes in governmental laws or regulations, governmental orders, labor disputes, strikes. The party which is prevented from performing by a cause beyond its control shall use its best efforts to eliminate such cause or event.
- XV. Notices, approvals and other acts required to be in writing hereunder shall be given in writing and shall be deemed given only when actually delivered to the other party at the address stated below. Actual delivery may be conclusively evidenced by a return receipt provided by U.S. Postal Service. Delivery to RCI shall be made at its principle business office, to the attention of New England Market Area Manager/Vice President at 26 Patriot Place, Foxboro, Massachusetts 02035 with a copy to WM Regional Counsel at 4 Liberty Lane West, Hampton, NH 03842. Delivery to the City shall be made at its City Hall, 166 Boulder Drive, Fitchburg, Massachusetts 01420 to the attention of [DPW Deputy Commissioner of Wastewater], with a copy to the City Solicitor.

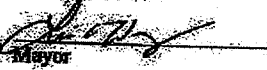
City of Fitchburg, January 16, 2018

Reports of  
Committees

Finance Committee

This Agreement is hereby mutually entered into on this 1<sup>st</sup> day of December 2012 in the County of Worcester, Massachusetts by:

City of Fitchburg

  
Mayor

Resource Capital Incorporated

By: 

City of Fitchburg

  
Board of Health

City of Fitchburg

  
W/W Commission



Reports of  
Committees

## Finance Committee

**First Amendment to the Leachate Discharge and Sludge Acceptance Agreement  
Between the City of Fitchburg and Resource Control, Inc.**

This Amendment is dated and effective this 25<sup>th</sup> day of September ("Effective Date"), by and between Resource Control, Inc. ("RCI") and the City of Fitchburg ("City").

WHEREAS, the parties entered into the Leachate Discharge and Sludge Acceptance Agreement dated December 1, 2012 ("Agreement"); All capitalized terms used herein shall have the same meaning as in the Agreement unless otherwise provided; and

WHEREAS, the parties wish to amend the Agreement to allow RCI to deliver leachate generated at Barre Landfill, located in Barre, MA ("Barre Leachate") to the City's Easterly Wastewater Treatment Facility ("Wastewater Treatment Facility"), subject to the terms and conditions herein.

NOW, THEREFORE, the parties agree as follows:

1. RCI shall be entitled to deliver and the City agrees to accept up to 25,000 gallons per day of Barre Leachate to be discharged at the pump station located at the Fitchburg Landfill.
2. In consideration for such right to discharge Barre Leachate at the Fitchburg Landfill pump station for treatment by the Wastewater Treatment Facility, RCI agrees to pay the City a disposal rate equal to \$7.30 per one hundred cubic feet.
3. RCI's right to deliver Barre Leachate under this Amendment shall be subject to the following conditions:
  - A. RCI will submit Barre Leachate laboratory analytical data from the twelve-month period preceding the Effective Date to allow the City to review the characteristics of the leachate in order to determine its acceptability for treatment at the Wastewater Treatment Facility.
  - B. In order to confirm on an ongoing basis, that the Barre Leachate/effluent characteristics shall not exceed those limits contained in the Fitchburg Road, Westminster, MA or Landfill Discharge Permit No. 376 ("Permit"), RCI shall conduct the same analytical testing and analysis as required to be performed on Fitchburg Landfill Leachate.
  - C. The flow limits provided in the Permit, 150,000 GPD average and 300,000 GPD peak, shall not be exceeded.
  - D. All Permit requirements shall also apply to the Barre Leachate:
    - i. Monitoring and Reporting Requirements;
    - ii. Compliance Schedule; and
    - iii. Standard Conditions
4. RCI shall complete necessary plumbing at the Fitchburg Landfill pump station to ensure that any disposer/transporter can properly connect into the receiving pump station to ensure safe operating practices and to minimize the potential for odors or nuisances during the Barre Leachate transport and disposal process.

City of Fitchburg, January 16, 2018

Reports of  
Committees

Finance Committee

5. The entire transportation and disposal process shall not create any nuisance conditions and if a nuisance results, RCI shall take immediate steps to rectify the nuisance condition(s).
6. Unless otherwise modified herein, all applicable terms and conditions in the Agreement shall remain in effect.
7. The parties agree they can terminate this Amendment Agreement as it applies to the delivery and acceptance of Barre Leachate with a thirty (30) day written notice, and the remaining terms and conditions of the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused the Amendment to be executed by their duly authorized representative as of the day and year first above written.

City of Fitchburg

Resource Control Incorporated

Mayor

By:

Title:

City of Fitchburg

Board of Health

City of Fitchburg

Jeffrey A. Marandich  
W/WW Commission

DPW Deputy Commissioner  
of Wastewater

Approved as to form:

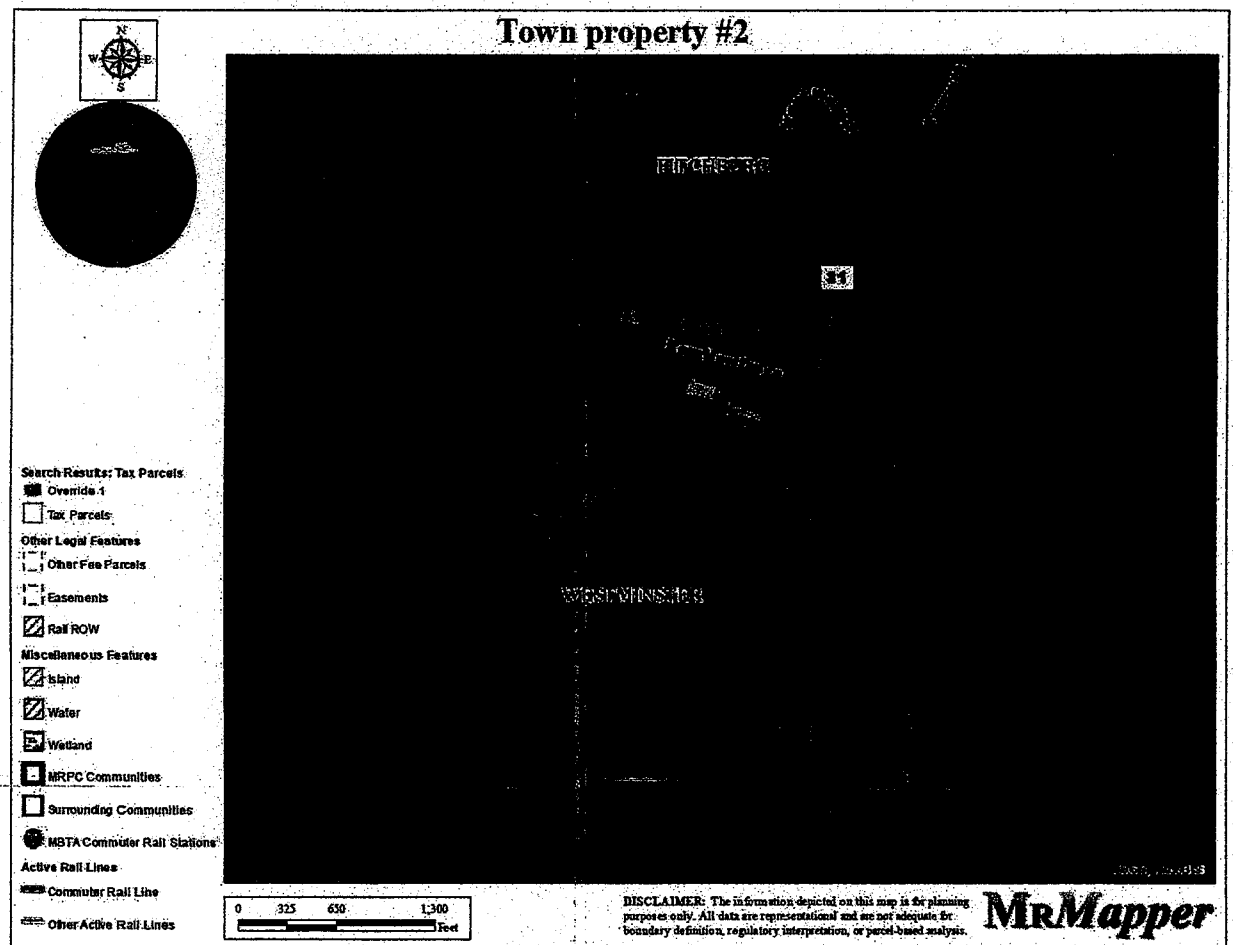
City Solicitor

Reports of  
Committees

Finance Committee

EXHIBIT D

PLAN OF WESTMINSTER SWAP PARCEL



January 16, 2018

Finance Committee

Property Location: FITCHBURG RD				MAP ID: 115 / 2 / 1				Bldg Name:				State Use: 9300			
Vision ID: 5339				Account #:				Bldg #: 1 of 1				Sec #: 1 of 1 Card 1 of 1			
Print Date: 12/28/2016 15:40															

PROPERTY INFORMATION										ASSESSMENT INFORMATION					
TOWN OF WESTMINSTER	4 Rolling			1 Paved		Description	Code	Appraised Value	Assessed Value	<div style="text-align: center; padding: 10px;"> <b>VISION</b>  <small>358 WESTMINSTER, MA</small> </div>					
11 SOUTH ST	5 Low					EXM LAND	9300	43,500	43,500						
WESTMINSTER, MA 01473	7 Swampy														
Additional Owners:															
Other ID: Subdivision Photo Ward Predict Callback GIS ID: M 171116 921588						ASSOC PID#  14.39784206									
<b>SUPPLEMENTAL DATA</b>						Total				43,500	43,500				

TOWN OF WESTMINSTER						PREVIOUS ASSESSMENTS (HISTORICAL)					
288W 145	06/03/1992	0	Jr. Code	Assessed Value	Jr. Code	Assessed Value	Jr. Code	Assessed Value	Jr. Code	Assessed Value	
2016	9300	43,500	2015	9300	43,500	2014	9300	43,500	2013	9300	43,500
Total:						43,500	Total:	43,500	Total:	43,500	

TAXPAYER INFORMATION				OTHER ASSESSMENTS			
Name	Type	Description	Amount	Code	Description	Number	Amount
Total:							

*This signature acknowledges a visit by a Data Collector or Assessor*

APPROXIMATE VALUE SUMMARY			
Appraised Bldg. Value (Cant)	0		
Appraised XF (B) Value (Bldg)	0		
Appraised OB (L) Value (Bldg)	0		
Appraised Land Value (Bldg)	43,500		
Special Land Value	0		
Total Appraised Parcel Value	43,500		
Valuation Method:	C		
Adjustment:	0		
Net Total Appraised Parcel Value	43,500		

BUILDING PERMIT RECORDS										FINISH CHANGE HISTORY									
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	Type	IS	ID	CA	Payable/Result					
									4/6/2011			DK	08	Messure-Labeled					
									7/23/2003			SS	01	Messure-1 Visit					
									8/3/2001			RH	27	Average correction					

LAND USE & ZONATION SECTION														
#	Use Code	Use Description	Zone	D	Frontage	Depth	Units	Unit Price	L Factor	S.A.	Area Dose	C Factor	SF Adj.	Notes-Adj
1	9300	Town of Westminster V	R2				50,900 SF	1.24	0.85	5	1,000	0.50	0.80	FOPO
1	9300	Town of Westminster V	R2				13.15 AC	1,600.00	1.00	0	1,000	0.50	0.80	FOPO
Total Card Land Units:							14.50 AC	Parcel Total Land Area:				14.5 AC	Total Land Value:	
													43,500	

Reports of  
Committees

Finance Committee

**EXHIBIT E**

IN THE YEAR TWO THOUSAND EIGHTEEN (RCI Version)

**A HOME RULE PETITION FOR A SPECIAL LAW RE: "AN ACT AUTHORIZING THE TOWN OF WESTMINSTER TO ACQUIRE STATE FOREST LAND TO BE USED FOR THE CONTINUATION OF SOLID WASTE MANAGEMENT AND DISPOSAL SERVICES"**

- WHEREAS:** this Home Rule Petition strengthens the commitment of the Town of Westminster to the preservation of Leominster State Forest while assuring continued operation of its vital solid waste management and disposal services as well as the Town's continued receipt of important host community revenues; and
- WHEREAS:** land within Leominster State Forest adjacent to the existing landfill (the "Continuation Parcel") is an appropriate location for continued provision of solid waste management and disposal services; and
- WHEREAS:** the Continuation Parcel is devoted to state forest use protected by Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts; and
- WHEREAS:** a two-thirds roll call vote of both houses of the General Court is required to authorize disposition of the Continuation Parcel and its future use for solid waste management and disposal services; and
- WHEREAS:** the Town of Westminster, acting cooperatively with its landfill operator, has acquired or intends to acquire land of greater acreage and environmental value than the Continuation Parcel, which land is to be granted to the Commonwealth of Massachusetts in compensation for the Continuation Parcel;

***NOW, THEREFORE BE IT ORDERED,***

That a petition to the General Court, accompanied by a bill for a special law relating to the Town of Westminster to be filed with an attested copy of the vote of the Westminster Town Meeting be, and hereby is, approved under Clause One (1) of Section Eight (8) of Article Two (2), as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows. The General Court may make clerical or editorial changes of form only to the bill, unless the Selectmen of the Town of Westminster approve amendments to the bill before enactment by the General Court. The Selectmen have been authorized to approve amendments to the bill consistent with the objective of securing the continuation of the existing landfill services and host community revenues of the Town of Westminster.

**PETITION FOR A SPECIAL LAW RE: "AN ACT AUTHORIZING THE TOWN OF WESTMINSTER TO ACQUIRE STATE FOREST LAND TO BE USED FOR THE CONTINUATION OF SOLID WASTE MANAGEMENT AND DISPOSAL SERVICES"**

Be it enacted, etc., as follows:

**SECTION 1.** Section 2 of chapter 323 of the acts of 1970, as amended by Section 2 of Chapter 531 of the acts of 1991, is hereby further amended by: (1) adding at the end of the second sentence following "owned by a private party" the words "or by a governmental entity"; (2) striking in the third

Reports of  
Committees

Finance Committee

sentence thereof the phrase "period of years" and inserting in place thereof "term"; and (3) striking in the third sentence thereof the word "twenty-five" and inserting in place thereof "the useful life of the landfill together with the duration of any closure and post-closure requirements associated therewith".

**SECTION 2.** Section 4 of chapter 323 of the acts of 1970 is hereby amended by striking out section 4 and inserting in place thereof the following section:

*Section 4.* The city of Fitchburg is hereby authorized to acquire by eminent domain, or otherwise, any lands, rights-of-way and other easements necessary for making the sanitary disposal area operational on the parcels of land described in Section 1. Notwithstanding the provisions of any general or special law to the contrary, including but not limited to Sections 32 to 37 of Chapter 7C of the General Laws, the Commonwealth of Massachusetts, acting by and through the Division of Capital Asset Management and Maintenance, is hereby authorized and directed to convey fee simple title to the town of Westminster to the following parcel of land, located within Leominster State Forest and now used for forestry purposes, to make use of said parcel for solid waste management and disposal services:

[INSERT LEGAL DESCRIPTION, AND REFERENCE RECORDED PLAN, defined as the "Continuation Parcel"]

In consideration for said conveyance, the town of Westminster shall simultaneously cause or direct the conveyance to the Commonwealth of Massachusetts of land of at least equal area, which land Westminster is hereby authorized to acquire, hold, convey, or arrange for conveyance by others, to the Commonwealth of Massachusetts even if said land is not located within the town of Westminster. The land to be conveyed to the Commonwealth of Massachusetts shall be acceptable to the Commissioner of the Department of Conservation and Recreation, and shall be permanently held and managed by said Department for one or more of the following uses: open space, forest, conservation, or recreation. Notwithstanding the provisions of any general or special law to the contrary, the town of Westminster is authorized to convey the fee or an easement or other interest in the Continuation Parcel to the private party providing long-term solid waste management and disposal services pursuant to the contract entered into under section 2 hereof. Without limiting the foregoing, the grant of a fee or easement or other interest to said private party and entering into a contract with said private party shall not be subject to the provisions of Chapter Thirty-B, or Section 4 of Chapter Forty, or Chapter One Hundred and Forty-Nine of the general laws.

**SECTION 3.** This act shall take effect upon its passage.

OR TAKE ANY ACTION WITH RESPECT THERETO

Reports of  
Committees

Finance Committee

EXHIBIT F

RESOLUTION – FITCHBURG

(DRAFT)

1. RESOLUTION NO. \_\_\_\_

**ADOPTING AND ENDORSING THE WESTMINSTER HOME RULE PETITION TO THE GENERAL COURT, TITLED “AN ACT AUTHORIZING THE TOWN OF WESTMINSTER TO EXCHANGE LAND FOR THE CONTINUATION OF SOLID WASTE MANAGEMENT AND DISPOSAL SERVICES”**

**WHEREAS**, on [DATE], the Town of Westminster acting through its Town Meeting voted to petition the General Court to approve a home rule petition authorizing the town of Westminster to exchange land for the continuation of solid waste management and disposal services; and

**WHEREAS**, the Westminster Home Rule Petition asks the Massachusetts General Court to adopt amendments to special acts relating to the operation of the Fitchburg/Westminster Landfill located within the Town of Westminster; and

**WHEREAS**, pursuant to the Westminster Home Rule Petition, certain land identified therein (the “Continuation Parcel”) would be transferred by the Commonwealth to the Town of Westminster for future use for solid waste management and disposal services benefitting both the City of Fitchburg and the Town of Westminster; and

**WHEREAS**, the City of Fitchburg is a party to the solid waste management and disposal services agreement for the operation of the Fitchburg/Westminster Landfill existing landfill, and would be a party to the second amended and restated agreement relating thereto and to the Continuation Parcel (the “Continuation Agreement”); and

**WHEREAS**, the Continuation Agreement would enure to the benefit the City of Fitchburg.

**NOW THEREFORE, BE IT RESOLVED** that the City of Fitchburg approves and supports the Westminster Home Rule Petition and the request by the Town of Westminster that the General Court adopt amendments to the special acts as set forth herein.

Adopted this \_\_\_\_ day of \_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_

Approved: \_\_\_\_\_

EXHIBIT G

ZONING AMENDMENTS - WESTMINSTER

ARTICLE 10. To see if the Town will vote to amend the Zoning Map of the Town of Westminster to establish a new zoning district entitled "Solid Waste Management District" in the location depicted on the plan entitled "Westminster, MA: Fitchburg/Westminster Landfill Proposed Facilities" prepared by the Massachusetts Regional Planning Commission, a copy of which has been placed on file with the Town Clerk, the bounds of said district being more particularly described as follows:

The Solid Waste Management District is located within the Town of Westminster, County of Worcester, State of Massachusetts and consists of the following Town of Westminster Assessor's Parcels (as of 2017) in their entirety: assessor's map 142 lot 1; assessor's map 141 lot 3; assessor's map 141 lot 4; assessor's map 118 lot 2; the southerly portion of assessor's map 115 lot 2; and the easterly portion of assessor's map 144 lot 1. The portioned areas being included in the Solid Waste Management District are described as follows:

The first portion of land, the southerly portion of assessor's map 115 lot 2, being described as follows:

Beginning at the southwesterly corner of assessor's map 115 lot 2, said corner being also the northwesterly corner of assessor's map 118 lot 1 and on the easterly right of way line of Fitchburg Road, thence;

Northerly along Fitchburg Road a distance of one hundred thirty-five feet (135') to a point; thence;

Turning easterly and running parallel to the southerly lot line of assessor's map 115 lot 2 five hundred feet (500') to a point; thence;

Turning and running southerly in a direction perpendicular to the previously described line one hundred twenty-five feet (125') more or less to a point on the aforementioned southerly lot line of assessor's map 115 lot 2; thence;

Turning and running westerly along the southerly lot line of assessor's map 115 lot 2 five hundred fifty feet (550') more or less to the point of beginning;

The second portion of land, the easterly portion of assessor's map 144 lot 1, being described as follows:

Beginning at the southeasterly corner of assessor's map 144 lot 1, said corner also being the north-easterly corner of assessor's map 106 lot 1 and on the Town Line between Westminster and Leominster, thence;

Westerly along the southerly line of assessor's map 144 lot 1 two thousand seven hundred twenty feet (2720') to a point along the southern boundary of assessor's map 144 lot 1; thence;

Northerly in a straight line to the southeasterly corner of assessor's map 141 lot 4 one thousand nine hundred eighty feet (1980') more or less to the southeast corner of assessor's map 141 lot 4; thence;

North, north-easterly along assessor's map 141 lot 4 and assessor's map 141 lot 3 to a point where the border of assessor's map 141 lot 3 turns easterly; thence;



Reports of  
Committees

Finance Committee

Easterly along the southern line of assessor's map 141 lot 3 to the intersection with assessor's map 144 lot 1, thence

Southerly along the border between assessor's map 144 lot 1 and assessor's map 142 lot 1, thence

Easterly along the border between assessor's map 144 lot 1 and assessor's map 142 lot 1 to the southeast corner of assessor's map 142 lot 1 and a point on the Town Line between Westminster and Leominster, thence

Southerly along the Town Line between Westminster and Leominster to the point of beginning. Said areas described to be included with the Solid Waste Management District Zone.

and further to amend Section 205-5 of the Westminster Zoning Bylaw to add the district to the list of zoning districts in the Town, as follows:

**Solid Waste Management District  
SWMD**

or act in relation thereto.

**ARTICLE 11.** To see if the Town will vote to amend the Westminster Zoning Bylaw to add a new Section 205-8 establishing requirements for the use of land within the Solid Waste Management District (SWMD), as set forth below, or act in relation thereto.

**§205-8: Solid Waste Management District (SWMD)**

**A. Purpose.** The purpose of the SWMD is to provide a suitable location for Solid Waste Management and Recycling Facility uses within the Town of Westminster that will protect the health and safety of the residents of the Town while allowing the Town to meet its Solid Waste Management and Recycling Facility needs.

**B. Permitted Uses.** The following uses shall be allowed as of right within the SWMD:

1. Solid Waste Management;
2. Recycling Facility;
3. Federal, state and municipal park, playground or recreational facility; and
4. All uses or structures accessory to permitted uses listed above.

**C. Prohibited Uses.**

1. Solid Waste Management and Recycling Facility uses which are subject to Board of Health site assignment, and which are not in compliance with the terms and conditions of said site assignment.
2. Solid Waste Management and Recycling Facility uses which are subject

to permitting by the Massachusetts Department of Environmental Protection, and which are not in compliance with the terms and conditions of said permits.

3. All uses not expressly permitted in Section B, above.

D. Dimensional Standards.

1. Lots within the SWMD shall be at least five acres in size.

2. No waste disposal shall take place within 1,000 feet of a dwelling.

3. No waste disposal shall take place within 50 feet of a front, rear or side lot line.

The dimensional standards set forth above are the only such standards applicable within the Solid Waste Management District. The Parking and Loading requirements set forth in Article VIII of the Zoning Bylaws are inapplicable within the Solid Waste Management District.

ARTICLE 12. To see if the Town will vote to amend Article II (Definitions), Section 205-4 - Terms Defined, of the Westminster Zoning Bylaw to add a new definition for Solid Waste Management as follows:

**SOLID WASTE MANAGEMENT** - any activity, together with associated buildings, structures and facilities, concerning the handling, movement, transfer, composting, re-use, sorting, storage, gas-to-energy conversion, and disposal of solid waste as regulated or permitted by the Massachusetts Department of Environmental Protection pursuant to 310 Code of Massachusetts Regulations Part 19.000, including any such activities and associated facilities as they may be regulated or permitted by amendments of such regulations or by successor state agencies.

or act in relation thereto.

Reports of  
Committees

Finance Committee

## EXHIBIT H

### OTHER TOWN MEETING ARTICLES - WESTMINSTER

**ARTICLE 7.** To see if the Town will vote to authorize the Board of Selectmen to acquire from the Commonwealth, by gift and for the purpose of conveyance, certain parcels of land within or near the Leominster State Forest, and to authorize the Board of Selectmen to convey said parcels to Resource Control Inc. and/or any affiliate thereof for the purpose of continuing the operation of the current landfill located off Fitchburg Road in Westminster and extending the permitted capacity of said landfill, on such terms and conditions and for such consideration, which may be nominal consideration, as the Board of Selectmen deems appropriate, and further, to authorize the Board of Selectmen to petition the General Court for special legislation to authorize the Commonwealth to convey said Leominster State Forest parcels to the Town and to authorize the Town to convey said Leominster State Forest parcels to Resource Control Inc. and/or any affiliate notwithstanding the provisions of G.L. c. 30B, provided, however, that the General Court may make clerical or editorial changes of form only to the bill, unless the Board of Selectmen approves amendments to the bill before enactment by the General Court that are within the scope of the general public objectives of the petition, and to authorize the Board of Selectmen to approve such amendments and take any and all steps, and to execute any and all instruments, to effectuate the foregoing transactions, or take any other action in relation thereto.

**ARTICLE 8.** To see if the Town will vote to transfer the care, custody and control of the parcel of land located at Fitchburg Road, identified by the Assessors on Map 115 as Parcel 2, containing 14.3 acres, more or less, and acquired by the Town by instrument recorded with the Worcester North Registry of Deeds in Book 2080, Page 145, from the tax custodian for tax title purposes to the Board of Selectmen for the purpose of conveyance, and further to authorize the Board of Selectmen to convey said parcel to the Commonwealth, as partial consideration for the Leominster State Forest parcels to be conveyed to the Town by the Commonwealth, on such terms and conditions and for such consideration, which may be nominal consideration, as the Board of Selectmen deems appropriate, or take any other action in relation thereto.

**ARTICLE 9.** To see if the Town will vote to authorize the Board of Selectmen to acquire, by gift and for the purpose of conveyance, such parcels of land and/or interests therein as may be donated to the Town by Resource Control Inc. and/or any affiliate thereof, and to authorize the Board of Selectmen to convey said parcels of land and/or interests therein to the Commonwealth on such terms and conditions and for such consideration, which may be nominal consideration, as the Board of Selectmen deems appropriate, or take any other action in relation thereto.

Reports of  
Committees

Finance Committee

ACTIVE/93395835.1

Report accepted. Order adopted by unanimous vote. 10 members  
present. Board consists of 10 members.  
Order signed by the Mayor January 17, 2018.

Hearing  
Petition #302-17

RECESSED HEARING

302-17. Unutil, to install a new pole #1 on Brittany Lane at Rollstone Road (Plan No. 3447-L), to use as new underground electric riser pole to Brittany Lane homes.

REPORT

The Committee on

to which was referred this petition would recommend that the petition be granted, be given leave to withdraw.

PETITION

of

Unutil, to install a new pole #1 on Brittany Lane at Rollstone Road (Plan NO. 3447-L) to use as new underground electric riser pole to Brittany Lane Homes.

In City Council

December 7, 2017

Referred to Committee on

Public Hearing January 4, 2018

Anna M. Farrell

Clerk

Report Read and Accepted

Clerk

IN CITY COUNCIL MEETING  
Mr. Jim Dee from Unutil was present. He explained that petition #305-17, which was referred to the Public Works Committee on December 7, 2017, go hand in hand with this petition and must be approved before the work associated with this petition can begin. Councillor Kaddy, Public Works Committee Chair, stated that a Public Works Committee meeting will be held in two weeks and the petition will be addressed and the petition will be addressed by the service proposed by the new pole could not be placed underground. Mr. Dee replied that it is cost prohibitive and the road would have to be opened.  
No one spoke in favor of or in opposition to the petition. Motion to hold the petition pending receipt of report from the Public Works Committee passed by unanimous vote. 10 members present. board consists of 10 members.  
Anna M. Farrell, Clerk

12-13-18  
12-13-18  
1-4-18  
No. 302-17  
2017

City of Fitchburg, January 16, 2018

Hearing  
Petition #302-17

(Petition for Original Pole Location)

CITY/TOWN COPY

Fitchburg, MA November 14, 2017  
FITCHBURG CITY CLERK

To the City Council of the City of Fitchburg:

2017 NOV 20 AM 11:34

Unitil, a company incorporated under the laws of the Commonwealth for the transmission of electricity for lighting, heating and power, respectfully ask permission to construct and use a line for such transmission, with the poles and other fixtures necessary to sustain and protect its wires, upon and along the public ways in said City as follows:

BRITTANY LANE – Installing a new pole# 1 on Brittany Ln. @ Rollstone Rd. (Plan No. 3447-L) To use as new Underground Electric riser pole to Brittany Lane homes.

And to this end your Honorable Board is hereby requested, after due notice and a public hearing as provided by law, to grant to your petitioner, and its successors and assigns, a location for such line agreeably to the provisions of Chapter 166 of the General Laws and all acts in amendment thereof.

Also for permission to place and maintain underground laterals, manholes, handholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

It is suggested that the poles be located substantially as shown on a plan filed herewith marked "Unitil Proposed Pole Locations in Fitchburg, Plan No. 3447-L, Dated 11/14/17".

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

By  
Keith Caribo  
Manager Electric T & D Operations

City of Fitchburg

2017

Received and filed.

City Clerk

Hearing  
Petition #302-17

For City Clerk's Book  
(Copy of Order adopted Granting original Pole Location,  
and Certificate of Notice and Hearing)

City of Fitchburg

IN CITY COUNCIL

ORDERED: That upon petition of Unitil, dated 11/14/17 due notice having been given and a public hearing held as provided by law, permission is hereby given said Company to construct and use a line for the transmission of electricity for lighting, and power, with the poles and other fixtures necessary to sustain and protect its wires, upon and along the public ways in said City as follows:

BRITTANY LANE – Installing a new pole# 1 on Brittany Ln. @ Rollstone Rd. (Plan No. 3447-L) To use as new Underground Electric riser pole to Brittany Lane homes.

And to said Company, its successors and assigns, is hereby granted a location for such line, the same to be constructed and maintained in accordance with the Ordinances of said City and with the following

SPECIFICATIONS:

The poles shall be located substantially as shown on a plan filed herewith marked "Unitil Proposed Pole Locations in Fitchburg, Plan No. 3447-L, Dated 11/14/17" hereby referred to and made a part of this order.

Also that permission be and hereby is granted to place and maintain underground laterals, manholes, handholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

I hereby certify that the foregoing order was adopted after due notice and a public hearing as prescribed by Chapter 166 of the General Laws, namely, after a public hearing had been held by the City Council on \_\_\_\_\_ 20\_, written notice of the time and place of which had been mailed at least seven days prior thereto by me to all owners of real estate abutting upon the ways or parts of ways upon, along or across which the lines are to be constructed under said order, said ownership having been determined by the last preceding assessment for taxation.

City Clerk

*City of Fitchburg*

January 16, 2018

Hearing  
Petition #302-17

(Order for Adoption by Granting Original Pole Location)

City of Fitchburg

IN CITY COUNCIL

ORDERED: that upon petition of Unitil dated 11/14/17, due notice having been given and a public hearing held as provided by law, permission is hereby given said Company to construct and use a line for the transmission of electricity for lighting, heating and power, with the poles and other fixtures necessary to sustain and protect its wires, upon and along the public ways in said City as follows:

BRITTANY LANE – Installing a new pole# 1 on Brittany Ln. @ Rollstone Rd. (Plan No. 3447-L) To use as new Underground Electric riser pole to Brittany Lane homes.

And to said Company, its successors and assigns, is hereby granted a location for such line, the same to be constructed and maintained in accordance with the Ordinances of said City and with the following

SPECTFICATIONS:

The poles shall be located substantially as shown on a plan filed herewith marked "Unitil Proposed Pole Locations in Fitchburg, Plan No. 3447-L, Dated 11/14/17," hereby referred to and made a part of this order.

Also that permission be and hereby is granted to place and maintain underground laterals, manholes, handholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

(Signed) \_\_\_\_\_ City Clerk



Hearing  
Petition #302-17

For the Company  
(Attested Copies of Order Adopted by Granting  
Original Pole Locations and of Certificate of Notice of Hearing)

City of Fitchburg

IN CITY COUNCIL

ORDERED: that upon petition of Unitil, dated 11/14/17, due notice having been given and a public hearing held as provided by law, permission is hereby given said Company to construct and use a line for the transmission of electricity for lighting, heating and power, with the poles and other fixtures necessary to sustain and protect its wires, upon and along the public ways in said City as follows:

BRITTANY LANE -- Installing a new pole# 1 on Brittany Ln. @ Rollstone Rd. (Plan No. 3447-L) To use as new Underground Electric riser pole to Brittany Lane homes.

And to said Company, its successors and assigns, is hereby granted a location for such line, the same to be constructed and maintained in accordance with the Ordinances of said City and with the following

SPECIFICATIONS:

The poles shall be located substantially as shown on a plan filed herewith marked "Unitil Proposed Pole Locations in Fitchburg, Plan No. 3447-L, Dated 11/14/17," hereby referred to and made a part of this order.

Also that permission be and hereby is granted Unitil to place and maintain underground laterals, manholes, handholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

(Copy of Certificate by City Clerk appearing on his record of the foregoing order.)

I hereby certify that the foregoing order was adopted after due notice and a public hearing as prescribed by Chapter 166 of the General Laws, namely, after a public hearing had been held by the City Council on \_\_\_\_\_ 20\_ written notice of the time and place of which had been mailed at least seven days prior thereto by me to all owners of real estate abutting upon the ways or parts of ways upon, along or across which the lines are to be constructed under said order, said ownership having been determined by the last preceding assessment for taxation.

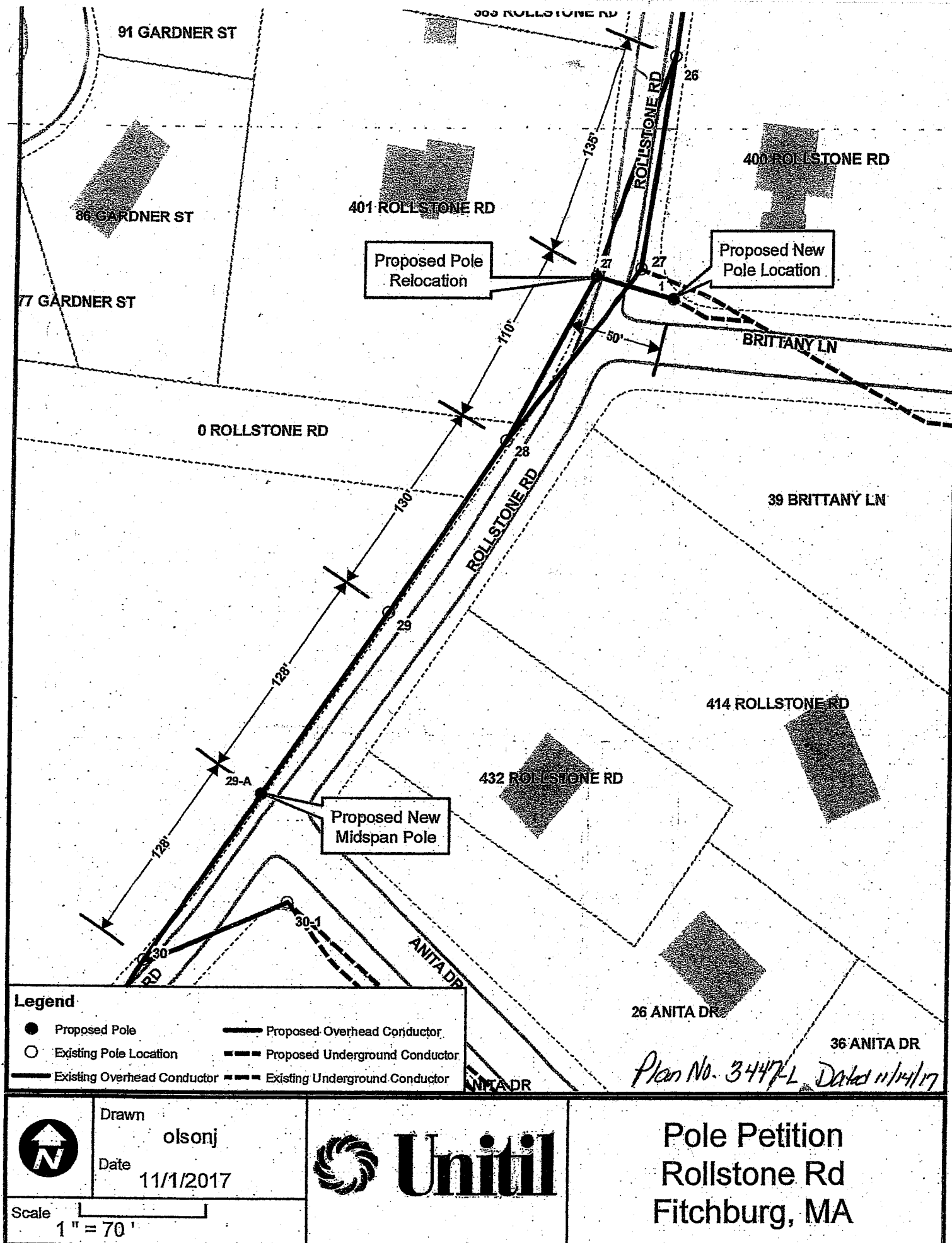
I hereby certify that the foregoing are true copies of (1) an order adopted by the City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 20 , and (2) my certificate as to notice and hearing which appears on my official record of said order, and that the original order was duly recorded by me in a book kept exclusively for the purpose of recording such orders.

Attest: \_\_\_\_\_, 20  
City Clerk

City of Fitchburg,

January 16, 2018

Hearing  
Petition #302-17



Hearing resumed and continued to February 6, 2018 by unanimous vote. 10 members present. Board consists of 10 members.

## Orders-Finance

**ORDERS-FINANCE**

The following Orders were referred to the Finance Committee:

- 010-18. ORDERED THAT: There be and hereby is appropriated the sum of THREE HUNDRED THOUSAND AND 00/100 DOLLARS (300,000.00) same to be charged against AVAILABLE FUNDS and credited to the following DEPARTMENT OF PUBLIC WORKS, SNOW & ICE accounts:
- |                             |              |
|-----------------------------|--------------|
| PERSONAL SERVICES, OVERTIME | \$ 40,000.00 |
| EQUIPMENT RENTAL            | \$100,000.00 |
| PLOWS & BLADES              | \$ 60,000.00 |
| SALT                        | \$100,000.00 |
- 011-18. ORDERED THAT: There be and hereby is transferred from within the sum of TWENTY-FOUR THOUSAND, ONE HUNDRED EIGHT AND 00/100 DOLLARS (\$24,108.00) same to be transferred from POLICE, PERSONAL SERVICES, ANIMAL CONTROL OFFICER (\$16,732.00) and from POLICE, PERSONAL SERVICES, ANIMAL CONTROL OVERTIME (\$7,376.00) and credited to POLICE, OTHER EXPENSES, ANIMAL CONTROL.
- 012-18. ORDERED THAT the City of Fitchburg hereby approves the expenditure of funds from the Massachusetts Executive Office of Public Safety and Security, FY18 Shannon Community Safety Initiative grant in the approximate amount of \$142,709.24 (ONE HUNDRED FORTY-TWO THOUSAND, SEVEN HUNDRED NINE AND 24/100 DOLLARS) for the purpose of said grant, which is to reduce gang and youth related violence.
- 013-18. ORDERED THAT: The City of Fitchburg hereby approves the expenditure of funds from the Department of Fire Services grant in the approximate amount of \$56,000.00 (FIFTY-SIX THOUSAND AND 00/100 DOLLARS) for the purpose of said grant, which is to purchase a new regional Fire Safety House to be used in teaching fire safety.

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**PETITIONS**

The following Petitions were referred to the Public Works Committee:

- 014-18. Councillor Paul Beauchemin, to install more lighting at the roundabout located on Electric Ave. and Rollstone Road, for safety purposes.
- 015-18. Councillor Amy L. Green, to find remedy by installing a berm or curb at the residence of 23-25 Hobson Street to stop further damage done by water.

The meeting adjourned at 7:23 P.M.

  
Anna M. Farrell, Clerk

## Petitions

*City of Fitchburg,*.....

*City of Fitchburg,*